

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.

**INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX
PETROLEUM REVENUE TAX**

**The Double Taxation Relief and International
Tax Enforcement (Belgium) 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 (Belgium) Order 2010.

(1) 2010 c. 8.
(2) 2006 c. 25.

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) (Belgium) Order 1987⁽³⁾, have been made with the Government of the Kingdom of Belgium with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax, petroleum revenue tax and taxes of a similar character imposed by the laws of Belgium and for the purpose of assisting international tax enforcement;
- (b) it is expedient that the arrangements should have effect.

Name
Clerk of the Privy Council

⁽³⁾ S.I. 1987/2053.

SCHEDULE

Article 2

PROTOCOL AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT
OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND
CAPITAL GAINS,
SIGNED AT BRUSSELS ON 1 JUNE 1987

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

Desiring to amend the Convention for the avoidance of double taxation and the
prevention of fiscal evasion with respect to taxes on income and capital gains, signed at
Brussels on 1 June 1987 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

The text of Article 2 of the Convention is deleted and replaced by the following:

*"1. This Convention shall apply to taxes on income and on capital gains imposed on behalf
of a Contracting State or of its political subdivisions or local authorities, irrespective of the
manner in which they are levied.*

*2. There shall be regarded as taxes on income and on capital gains all taxes imposed on
total income or on elements of income, including taxes on gains from the alienation of movable
or immovable property, as well as taxes on capital appreciation.*

3. The existing taxes to which the Convention shall apply are in particular:

(a) in the United Kingdom:

- (i) the income tax;*
- (ii) the corporation tax;*
- (iii) the capital gains tax;*
- (iv) the petroleum revenue tax;*
(hereinafter referred to as "United Kingdom tax");

(b) in Belgium:

- (i) the individual income tax (l'impôt des personnes physiques - de
personenbelasting);*
- (ii) the corporate income tax (l'impôt des sociétés - de
vennootschapsbelasting);*
- (iii) the income tax on legal entities (l'impôt des personnes morales - de
rechtspersonenbelasting);*
- (iv) the income tax on non-residents (l'impôt des non-résidents - de
belasting van niet-inwoners);*

including the prepayments and the surcharges on these taxes and prepayments; (hereinafter referred to as "Belgian tax").

4. *The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws."*

ARTICLE II

1. The text of paragraph 1, (i) of Article 3 of the Convention is deleted and replaced by the following:

"(i) the term "international traffic" means any transport by a ship, an aircraft or a road or railway vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road or railway vehicle is operated solely between places in the other Contracting State;"

2. The text of paragraph 1, (j) of Article 3 of the Convention is deleted and replaced by the following:

"(j) the term "competent authority" means:

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

(ii) in Belgium, the Minister of Finance or his authorised representative;"

3. The following sub-paragraph (l) is inserted in paragraph 1 of Article 3 of the Convention:

"(l) the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State:

(i) to the extent that it is operated to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements, and

(ii) provided that it is either:

A) in the case of Belgium, an entity, including pension funds, or a pension scheme arranged through an insurance company, that is organised under Belgian law and is regulated by the Banking, Finance and Insurance Commission or registered with the Belgian tax Administration; or

B) in the case of the United Kingdom, a pension scheme (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes.

The competent authorities may agree to include in the above, pension schemes of identical or substantially similar economic or legal nature."

ARTICLE III

1. The text of paragraph 1 of Article 4 of the Convention is deleted and replaced by the following:

“1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in a Contracting State in respect only of income from sources in that State.”

2. The following paragraph 5 is inserted in Article 4 of the Convention:

“5. The term “resident of a Contracting State” includes:

- (a) a pension scheme established in that State; and*
- (b) a non-profit organisation that is established and is operated exclusively for religious, charitable, scientific, cultural or educational purposes (or for more than one of those purposes) which is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.”*

ARTICLE IV

Article 8 of the Convention is deleted and replaced by the following:

“Article 8

Shipping and Air Transport

“1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.”

ARTICLE V

The text of Article 10 of the Convention is deleted and replaced by the following:

“1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. 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, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

- (a) *a company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least twelve months, shares representing directly at least 10 per cent of the capital of the company paying the dividends;*
- (b) *a pension scheme which is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension scheme or through an associated enterprise.*

4. *Notwithstanding the provisions of paragraphs 2 and 3, (a) of this Article, dividends paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 of this Convention by an investment vehicle resident of a Contracting State whose income from such immovable property is exempt from tax and which distributes most of that income annually may also be taxed in that State and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.*

The provisions of paragraphs 2, 3 and 4 of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. *The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the paying company is a resident.*

6. *The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends 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 Convention, as the case may be, shall apply.*

7. *Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company to a resident of the first-mentioned State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. The provisions of this paragraph shall not prevent that other State from taxing dividends related to a holding which is effectively connected with a permanent establishment or a fixed base operated in that other State by a resident of the first-mentioned State.*

8. *No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment."*

ARTICLE VI

The text of Article 11 of the Convention is deleted and replaced by the following:

"1. *Interest 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 interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.*

3. *Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is:*

- (a) interest paid in respect of a loan of any nature granted or a credit extended by an enterprise to another enterprise;*
- (b) interest paid to a pension scheme, provided that such interest is not derived from the carrying on of a business by the pension scheme or through an associated enterprise;*
- (c) interest paid to the other Contracting State, to one of its political subdivisions or local authorities or to a public entity.*

4. *The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but does not include penalty charges for late payment or income dealt with in Article 10 of this Convention.*

5. *The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.*

6. *Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.*

7. *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 interest 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. In that 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 Convention.*

8. *No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment."*

ARTICLE VII

1. The text of paragraph 1 of Article 12 of the Convention is deleted and replaced by the following:

“1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.”

2. The following paragraphs 5 and 6 are inserted in Article 12 of the Convention:

“5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 State in which the permanent establishment or fixed base is situated.

6. No relief shall be available under this Article 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 VIII

The text of paragraph 3 of Article 13 of the Convention is deleted and replaced by the following:

“3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.”

ARTICLE IX

1. The text of paragraph 3 of Article 15 of the Convention is deleted and replaced by the following:

“3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship, an aircraft or a road or railway vehicle operated in international traffic, shall be taxable only in that State.”

2. The following paragraph 4 is inserted in Article 15 of the Convention:

“4. An employment is exercised in a Contracting State when the activity in respect of which the salaries, wages and other similar remuneration are paid, is effectively carried on in that State. The activity is effectively carried on in a Contracting State when the employee is physically present in that State for carrying on the activity, irrespective of the place in which the contract of employment was made, the residence of the employer or of the person paying the remuneration, the place or time of payment of the remuneration, or the place where the results of the employee’s work are exploited. If an activity is effectively carried on in a Contracting State, only that part of the remuneration that is attributable to such activity may be taxed in that State.”

ARTICLE X

Article 16 of the Convention is deleted and replaced by the following:

“Article 16

Company Managers

1. *Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. This paragraph shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature to those exercised by a member of the board of directors or a similar organ of a company.*

2. *Remuneration derived by a person referred to in paragraph 1 of this Article from a company which is a resident of a Contracting State in respect of the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State in respect of his personal activity as a partner in a company, other than a company with share capital, which is a resident of Belgium, shall be taxable in accordance with the provisions of Article 15 of this Convention, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the “employer” were references to the company.”*

ARTICLE XI

The text of Article 18 of the Convention is deleted and replaced by the following:

“Subject to the provisions of Article 19,

- (a) pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State;*
- (b) however, where pensions and other similar remuneration under a pension scheme were first credited or paid before 1 January in the calendar year next following that in which the first Protocol to this Convention entered into force, all payments under that scheme shall be taxable only in the other State.”*

ARTICLE XII

The text of Article 19 of the Convention is deleted and replaced by the following:

- “1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.*
- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who is a national of that State.*
- 2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political*

subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) *However, such pension and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.*
3. *The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof."*

ARTICLE XIII

1. In paragraph 1 of Article 21 of the Convention, the word "*their*" is deleted before the words "*natural resources situated in that State*".
2. The text of paragraph 3 of Article 21 of the Convention is deleted and replaced by the following:
- "3. *Profits derived by an enterprise of a Contracting State from the transportation of supplies or personnel by a ship or aircraft to a location where offshore activities are being carried on, or from the operation of tugboats or anchor handling vessels in connection with such activities, shall be taxable only in that Contracting State.*"
3. The text of paragraph 5, (b) of Article 21 of the Convention is deleted and replaced by the following:
- "(b) *Subject to sub-paragraph (c) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location where offshore activities are being carried on, or in respect of an employment exercised aboard a tugboat or anchor handling vessel in connection with such activities, shall be taxable only in that Contracting State.*"

ARTICLE XIV

The following paragraphs 3, 4 and 5 are inserted in Article 22 of the Convention:

- "3. *Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State, other than income paid out of trusts, not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State if these items are not effectively taxed in the first-mentioned State. An item of income is effectively taxed when it is included in the gross taxable base by reference to which the tax is computed.*
4. *Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 applicable provisions of this Convention.*

5. *No relief shall be available under this Article 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 income is paid to take advantage of this Article by means of that creation or assignment.*"

ARTICLE XV

1. The text of paragraphs 2 and 3 of Article 23 of the Convention is deleted and replaced by the following:

"2. *In the case of Belgium, double taxation shall be avoided as follows:*

- (a) *Where a resident of Belgium derives income, not being dividends, interest or royalties, which is taxed in the United Kingdom in accordance with the provisions of this Convention, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.*
- (b) *The exemption provided for in sub-paragraph (a) of this paragraph shall also be granted with respect to income regarded as dividends under Belgian law, which is derived by a resident of Belgium from a participation in an entity that has its place of effective management in the United Kingdom, and has not been taxed as such in the United Kingdom, provided that the resident of Belgium has been taxed in the United Kingdom, proportionally to his participation in such entity, on the income out of which the income regarded as dividends under Belgian law is paid. The exempted income is the income received after deduction of the costs incurred in Belgium or elsewhere in relation to the management of the participation in the entity.*
- (c) *The term "taxed" used in sub-paragraphs (a) and (b) means that the item of income is subjected to the tax regime that is normally applicable to such item according to the United Kingdom tax law.*
- (d) *Notwithstanding the provisions of sub-paragraphs (a) and (b) of this paragraph and any other provision of the Convention, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and comurbations, take into account the earned income (revenus professionnels – beroepsinkomsten) that is exempted from tax in Belgium in accordance with sub-paragraphs (a) and (b). These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.*
- (e) *Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the United Kingdom tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.*
- (f) *Dividends derived by a company which is a resident of Belgium from a company which is a resident of the United Kingdom shall be exempted from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.*
- (g) *Where a company which is a resident of Belgium derives from a company which is a resident of the United Kingdom dividends which are included in its aggregate income for Belgian tax purposes and which are not exempted from the corporate income tax according to sub-paragraph (f) of this paragraph, Belgium shall deduct from the Belgian tax relating to such dividends the United Kingdom tax levied on such dividends in accordance with Article 10 of this Convention and the United Kingdom tax levied on the profits out of which such dividends are paid. This deduction shall not exceed that part of*

the Belgian tax which is proportionally relating to such dividends.

- (h) *Where in accordance with Belgian law, losses of a Belgian enterprise attributable to a permanent establishment situated in the United Kingdom have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) of this paragraph shall not apply in Belgium to the profits of other chargeable periods attributable to that permanent establishment to the extent that those profits have also been relieved from tax in the United Kingdom by reason of compensation for the said losses.*
3. *For the purposes of paragraph 1 of this Article, profits, income and capital gains owned by a resident of the United Kingdom which may be taxed in Belgium in accordance with the provisions of this Convention shall be deemed to arise from sources in Belgium.*
4. *No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with a scheme or arrangement in connection with which relief is claimed to take advantage of this Article by means of that scheme or arrangement."*
2. Notwithstanding the provisions of paragraph 1 of Article 23 of the Convention, from the entry into force of its law providing for the exemption from tax of certain overseas dividends the United Kingdom shall eliminate double taxation on those dividends in accordance with that law.

ARTICLE XVI

The text of paragraph 5 of Article 24 of the Convention is deleted and replaced by the following:

"5. Except where the provisions of paragraph 1 of Article 9, paragraphs 7 or 8 of Article 11, paragraphs 4 or 6 of Article 12, or paragraphs 4 or 5 of Article 22 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State."

ARTICLE XVII

1. The following second sentence is inserted at the end of paragraph 2 of Article 25 of the Convention:

"Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States."

2. The following paragraph 5 is inserted in Article 25 of the Convention:

"5. Where,

(a) under paragraph 1 of this Article, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of the Convention, and

(b) *the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests within two years from the first day from which arbitration may be requested. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State. Unless a person directly affected by the case informs the competent authority of a Contracting State within three months from the communication of the mutual agreement that implements the arbitration decision, that he does not accept that mutual agreement, the arbitration decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.*

ARTICLE XVIII

The text of Article 26 of the Convention is deleted and replaced by the following:

“1. *The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.*

2. *Any information received under paragraph 1 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, 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 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 (ordre public).*

4. *If information is requested by a Contracting State in accordance with the provisions of 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, trust, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information the tax administration of the requested Contracting State shall have the power to ask for the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws. ”

ARTICLE XIX

1. The text of paragraph 1 of Article 28 of the Convention is deleted and replaced by the following:

“1. Notwithstanding any other provision of this Convention, relief from tax provided for in the Convention shall not be granted to an individual by a Contracting State in respect of income from sources within that Contracting State if the individual is subject to tax in the other Contracting State by reference only to the amount of his income which is remitted to or received in that other Contracting State and not by reference to the full amount of his worldwide income. However, where the income of such individual that is not remitted to or received in that other State is less than £2,000 (or the equivalent in euro) in a tax year, the first-mentioned State shall grant the relief from tax provided for in the Convention with regard to income that is remitted to or received in the other Contracting State.”

2. The following paragraph 7 is inserted in Article 28 of the Convention:

“7. The competent authorities of the Contracting States may settle by mutual agreement the conditions under which a collective investment vehicle which is established in a Contracting State and is not liable to tax as such in that State and which receives dividends or interest arising in the other Contracting State shall be treated for purposes of applying the Convention to such income as an individual resident of the Contracting State in which it is established and as the beneficial owner of the income it receives.”

ARTICLE XX

1. Each of the Contracting States shall notify the other Contracting State, 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 the Protocol shall have effect:

(a) in the United Kingdom :

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the Protocol enters into force;
- (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force; and
- (iii) in respect of petroleum revenue tax, for any chargeable period

beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force;

- (b) in Belgium :
- (i) in respect of taxes due at source on income credited or payable on or after 1 January ; and
 - (ii) in respect of taxes other than taxes due at source on income of any chargeable period ending on or after 31 December ;
- in the calendar year next following that in which the Protocol enters into force.

ARTICLE XXI

This Protocol, which shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

IN WITNESS WHEREOF, the undersigned duly authorised thereto, have signed this Protocol.

DONE in duplicate at Paris this 24th day of June 2009, in the English language.

FOR THE GOVERNMENT OF
THE UNITED KINGDOM OF
GREAT BRITAIN AND
NORTHERN IRELAND:

Stephen Timms

FOR THE GOVERNMENT OF
THE KINGDOM OF
BELGIUM:

Didier Reynders

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol (“the Protocol”) which amends the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Belgium 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) (Belgium) Order 1987 (S.I. 1987/2053) (“the Convention”). This Order brings the Protocol into effect.

Article 1 provides for citation.

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

The Convention 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 dividing 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.

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 will take effect in the United Kingdom—

- (a) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Protocol enters into force;
- (b) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Protocol enters into force; and
- (c) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

The Protocol will take effect in Belgium—

- (a) in respect of taxes due at source on income credited or payable on or after 1 January in the calendar year next following that in which the Protocol enters into force; and
- (b) in respect of all taxes other than taxes due at source on income for any chargeable period ending on or after 31 December in the calendar year next following that in which the Protocol enters into force.

The Protocol will take effect in respect of exchange of information on the date it 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 Order as a negligible impact on the private or voluntary sectors is foreseen.