STATUTORY INSTRUMENTS

2016 No. 750

CORPORATION TAX

INCOME TAX

The Double Taxation Relief (Guernsey) Order 2016

Made - - - - 13th July 2016

At the Court at Buckingham Palace, the 13th day of July 2016

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(**a**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercising the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Guernsey) Order 2016.

Double taxation arrangements to have effect

2.—(1) It is declared that there has been made with the States of Guernsey—

(a) the Exchange of Letters set out in Part 1 of the Schedule to this Order, and

(b) the Arrangement referred to in the Exchange of Letters, as set out in Part 2 of that Schedule, which varies the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1952(**b**), as amended by the arrangements set out in—

(i) the Schedule to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1994(**c**),

(ii) the Schedule to the Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2009(**d**), and

(**a**) 2010 c. 8.
(**b**) S.I. 1952/1215.
(**c**) S.I. 1994/3209.
(**d**) S.I. 2009/3011.

(iii) the Schedule to the Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2015(**a**),

with a view to affording relief from double taxation in relation to income tax or corporation tax and taxes of a similar character imposed by the laws of either party.

(2) It is further declared that it is expedient that the Arrangement should have effect.

Ceri King
Deputy Clerk of the Privy Council

(**a**) S.I. 2015/2008.

SCHEDULE

Article 2

PART 1

EXCHANGE OF LETTERS

BETWEEN HER MAJESTY'S GOVERNMENT AND THE STATES OF GUERNSEY CONCERNING AN ARRANGEMENT AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

London, 29 02 2016

Dear Chief Minister,

I have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the States of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income at Appendix 1 to this letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

David Gauke

St Peter Port, 09 03 2016

Dear Financial Secretary,

Further to your letter of 29 February 2016 to Guernsey's Chief Minister, I can confirm that on 7 March Guernsey's Policy Council agreed the proposed Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income at Appendix 1 to your letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof. This letter together with your letter and its Appendix 1 constitute our mutual acceptance of the provisions of the Arrangement between Guernsey and Her Majesty's Government.

In agreeing to this amendment to the existing Double Taxation Agreement (DTA) with Her Majesty's Government, we have done so in accord with our longstanding policy of partnership with the HM Treasury and HM Revenue and Customs to prevent the use of Guernsey for aggressive tax avoidance, tax fraud and tax evasion. The amendment incorporates into the existing DTA wording that is in the OECD's Model DTA, and which we would expect to be in any new DTA that emerges from the renegotiation of our existing DTA, shortly to commence. It also is consistent with the OECD BEPS principles to which we have previously indicated we are generally committed.

I also note your confirmed announcement on 16 March 2016 on this Arrangement, namely:

Guernsey/United Kingdom Double Taxation Agreement

A Protocol amending the Double Taxation Agreement between the UK and Guernsey has been entered into by an exchange of letters between the Governments of Guernsey and the United Kingdom. The amendments remove a potential loophole that may have allowed non-UK resident property developers to avoid income tax or corporation tax in the UK in certain circumstances and are effective from 16 March 2016. The agreement of this protocol demonstrates the UK's and Guernsey's joint commitment to working together to counter tax avoidance and evasion.

Yours sincerely
Gavin St Pier
Minister

cc Chief Minister, Policy Council

PART 2

APPENDIX 1 TO THE EXCHANGE OF LETTERS

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE STATES OF GUERNSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1994, 2009 AND 2015 ARRANGEMENTS BETWEEN THE TWO GOVERNMENTS

Her Majesty's Government and the States of Guernsey,

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion, have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994, 2009 and 2015 Arrangements.

2. To insert after subparagraph (4) of paragraph 3 of the 1952 Arrangement the following new subparagraph:

   "(5) Where profits include items of income or capital gains which are dealt with separately in other paragraphs of this Arrangement, then the provisions of those paragraphs shall not be affected by the provisions of this paragraph."

3. To insert after paragraph 3 of the 1952 Arrangement the following new paragraphs:

   "3A. (1) Income derived by a resident of one of the territories from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

   (2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

   (3) The provisions of subparagraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

   (4) The provisions of subparagraphs (1) and (3) shall also apply to the income from immovable property of a United Kingdom enterprise and a Guernsey enterprise."

   "3B.(1) Gains derived by a resident of one of the territories from the alienation of immovable property referred to in paragraph 3A and situated in the other territory may be taxed in that other territory.

   (2) Gains derived by a resident of one of the territories from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory."

4. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect from 16 March 2016.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains an Exchange of Letters between the United Kingdom and Guernsey concerning an Arrangement amending the 1952 Arrangement between the two parties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which was scheduled to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1952 (S.I. 1952/1215) and subsequently amended in 1994, 2009 and 2015. The Schedule also contains the text of the Arrangement referred to in the Exchange of Letters.

Article 2 provides that it is expedient that the Arrangement should have effect. The Arrangement relates to the avoidance of double taxation and varies the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1952, as amended.

The Arrangement will enter into force on the date of the later of the notifications of each territory of the completion of its legislative procedures. It will take effect in the United Kingdom and Guernsey from 16 March 2016.

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 produced for the Order as it gives effect to a previously announced policy to enact a double taxation agreement.

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