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

DRAFT STATUTORY INSTRUMENTS

2011 No.

INCOME TAX

The Double Taxation Relief (Aircraft Crew) (Brazil) Order 2011

Made - - - - [date] [Month] 2011

At the Court at Buckingham Palace, the [date] day of [Month] 2011

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 exercise of 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 (Aircraft Crew) (Brazil) Order 2011.

Double taxation agreement to have effect

2. It is declared that—

(a) the agreement set out in the Schedule to this Order has been made with the Government of the Federative Republic of Brazil;

(b) the agreement has been made with a view to affording relief from double taxation in relation to income tax and taxes of a similar character imposed by the laws of the Federative Republic of Brazil, derived by a member of the crew of an aircraft operated in international traffic; and

(c) it is expedient that the agreement should have effect.

Name
Clerk of the Privy Council

(**a**) 2010 c. 8.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL TO AVOID THE DOUBLE TAXATION OF SALARIES, WAGES AND OTHER REMUNERATION DERIVED BY A MEMBER OF THE CREW OF AN AIRCRAFT OPERATED IN INTERNATIONAL TRAFFIC

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil;

Having regard to the need to avoid the double taxation of salaries, wages and other remuneration derived by a member of the crew of an aircraft operated in international traffic;

Have agreed as follows:

ARTICLE 1

General Scope

This Agreement shall apply to individuals who are residents of one or both Contracting States.

ARTICLE 2

Taxes Covered

1. The Agreement shall apply to the following taxes:

   (a) in the case of the United Kingdom:

   the income tax;

   (b) in the case of Brazil:

   the individual income tax ("IRPF").

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Agreement:

   (a) the term "international traffic" means any transport by an aircraft, except where such transport takes place solely between points within a Contracting State;

   (b) the term "United Kingdom" means Great Britain and Northern Ireland;

   (c) the term "Brazil" means the Federative Republic of Brazil;

   (d) the term "competent authority" means:

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

(ii) in the case of Brazil, the Minister of Finance, the Secretary of the Federal Revenue or their authorised representatives;

(e) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Brazil, as the context requires;

(f) the term "national" means:

(i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom;

(ii) in relation to Brazil, any individual possessing the Brazilian nationality.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 6 (Mutual Agreement Procedure), have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any individual who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5

Rules of Taxation

Salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment as a member of the crew of an aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 6

Mutual Agreement Procedure

The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts regarding the interpretation or application of this Agreement.

ARTICLE 7

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Agreement. The exchange of information is not restricted by Article 1.

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 Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement or the oversight of the preceding activities. 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.

ARTICLE 8

Entry into Force and Termination

1. Each Contracting State shall notify the other of the completion of the procedures required by its laws for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

   (a) in the United Kingdom for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Agreement enters into force;

   (b) in Brazil with respect to salaries, wages and other remuneration arising in the taxable year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

2. This Agreement shall remain in force indefinitely, but either Contracting State may terminate the Agreement by giving written notice of termination to the other Contracting State at least six months in advance. In that event the Agreement shall cease to have effect as regards all income arising after 31st December of the calendar year in which the notice is given.

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

DONE in duplicate at Brasilia this 2nd day of September 2010 in the English and Portuguese languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:	**For the Government of the Federative Republic of Brazil:**
Dr. Vince Cable	*Pedro Luiz Carneiro de Mendonça*

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an agreement ("the Agreement") between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil for the avoidance of double taxation. This Order brings the Agreement into effect.

The Agreement aims to eliminate the double taxation of income derived by a member of the crew of an aircraft operated in international traffic. This is done by allocating the taxing rights that each country has under its domestic law over the same income solely to the country of residence.

Article 1 provides for citation.

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

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect as follows:

(a) in the United Kingdom for any year of assessment beginning on or after 6th April next following the date of entry into force; and

(b) in Brazil with respect to salaries, wages and other remuneration arising in the taxable year beginning on or after 1st January next following the date of entry into force.

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

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

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