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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Brunei Darussalam) Order 2013

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 5(2) of the Taxation (International and Other Provisions) Act 2010(**a**) and section 173(7) of the Finance Act 2006(**b**) 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 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Brunei Darussalam) Order 2013.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Agreement and Protocol set out in the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Brunei) Order 1950(**c**), have been made with the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;

(**a**) 2010 c. 8.
(**b**) 2006 c. 25.
(**c**) S.I. 1950/1977; the arrangements scheduled to which were previously amended by the arrangements scheduled to S.I. 1968/306 and 1973/2098.

(b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax and taxes of a similar character imposed by the laws of Brunei Darussalam and for the purpose of assisting international tax enforcement; and

(c) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM TO AMEND THE ARRANGEMENT BETWEEN THE GOVERNMENT OF BRUNEI AND HIS MAJESTY'S GOVERNMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME MADE IN 1950, AS AMENDED BY AN ARRANGEMENT IN 1968 AND A SUPPLEMENTARY ARRANGEMENT IN 1973

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;

Desiring to conclude an Agreement amending the Arrangement between the Government of Brunei and His Majesty's Government for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income made in 1950, as amended by an Arrangement in 1968 and a Supplementary Arrangement in 1973, (hereinafter referred to as "the Arrangement");

Have agreed as follows:

Article I

1. Paragraph (a) and (b) of sub-paragraph (1) of paragraph 2 of the Arrangement shall be deleted and replaced by the following new paragraphs:

"(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised."

"(b) The term "Brunei Darussalam" means the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, as an area over which it exercises sovereign rights and jurisdiction in accordance with international law."

Article II

2. The following shall be added to sub-paragraph (1) of paragraph 2 of the Arrangement:

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

(i) in the case of Brunei Darussalam, the Minister of Finance or his authorised representative;

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

Article III

3. Paragraph 13 of the Arrangement shall be deleted and replaced by the following new paragraph:

"13. (1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of the territories concerning taxes of every kind and description imposed on behalf of the territories, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Arrangement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by paragraph 1 of the Arrangement.

(2) Any information received under sub-paragraph (1) by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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 sub-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 territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorises such use.

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

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

(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 territory;

(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;

(d) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative 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.

(4) If information is requested by a territory in accordance with this paragraph 13, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of sub-paragraph (3) but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of sub-paragraph (3) be construed to permit a territory to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Article IV

4. A Protocol signed on the same date as this Agreement shall form an integral part of the Arrangement.

Article V

5. Each of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the United Kingdom of Great Britain and Northern Ireland shall notify the other through diplomatic channels of the completion of the procedures required by its laws for the bringing into force of the Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall have effect from that date.

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

DONE in duplicate at London on the 11th day of December 2012, in the English and Malay languages, both texts being equally authoritative. In case of any divergence in interpretation, the English text shall prevail.

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

David Gauke

FOR THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM:

Mohd Aziyan Abdullah

PART 2

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF BRUNEI AND HIS MAJESTY'S GOVERNMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME MADE IN 1950, AS AMENDED BY AN ARRANGEMENT IN 1968 AND A SUPPLEMENTARY ARRANGEMENT IN 1973

At the signing of the Agreement amending the Arrangement between the Government of Brunei and His Majesty's Government for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income made in 1950, as amended by an Arrangement in 1968 and a Supplementary Arrangement in 1973, the authorised signatories hereto have agreed the following provision which shall form an integral part of the Arrangement.

In relation to paragraph 13 of the Arrangement, it is understood that sub-paragraph (5) of that paragraph does not require Brunei to supply information or documentation pertaining to investment policy and strategy decisions, operational decisions, internal appointments and resource allocations or details of the global investment holdings of:

(i) The Autoriti Monetari Brunei Darussalam

(ii) The Brunei Investment Agency

(iii) The Employees Trust Fund Board

(iv) The Supplemental Contributory Pension Board or

(v) Any local or statutory authority or statutory body exempt from tax in Brunei Darussalam.

It is further understood that this list of institutions may be supplemented by agreement between the competent authorities.

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

DONE in duplicate at London on the 11th day of December 2012, in the English and Malay languages, both texts being equally authoritative. In case of any divergence in interpretation, the English text shall prevail.

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

David Gauke

FOR THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM:

Mohd Aziyan Abdullah

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an Agreement and Protocol ("the Arrangements") which further amend an arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Brunei Darussalam for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion ("the 1950 Arrangement"). The 1950 Arrangement was scheduled to the Double Taxation Relief (Taxes on Income) (Brunei) Order (S.I. 1950/1977) and previously amended by the supplementary arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Brunei) Orders S.I. 1968/306 and S.I 1973/2098. This Order brings the Arrangements into effect.

The 1950 Arrangement aims to eliminate the double taxation of income arising in one country and paid to residents of the other country. It does this by allocating the taxing rights that each country has under its domestic law over the same income, 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 Arrangements continue this approach.

The Arrangements make a small number of amendments to the 1950 Arrangement, bringing it up to date as regards the territorial scope and the definitions of the competent authorities. They also introduce a new Exchange of Information Article which brings the 1950 Arrangement into line with the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") Model Tax Convention on Income and on Capital.

Article 1 provides for citation.

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

The Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures and will take effect from that date.

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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