*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.

# CAPITAL GAINS TAX

# CORPORATION TAX

# INCOME TAX

# INHERITANCE TAX

# VALUE ADDED TAX

## The Double Taxation Relief and International Tax Enforcement (Cayman Islands) 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(**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 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—

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(**a**) 2010 c. 8.
(**b**) 2006 c. 25.

**Citation**

**1.** This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Cayman Islands) Order 2010.

**Double taxation and international tax enforcement 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 arrangement set out in Part 2 of that Schedule have been made with the Government of the Cayman Islands;

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

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

*Name*
Clerk of the Privy Council

# SCHEDULE

Article 2

## PART 1

## EXCHANGE OF LETTERS

## BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM AND THE CAYMAN ISLANDS

## CONCERNING

## AN ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION

15th June 2009

Sir,

I have the honour to propose to you –

- the Arrangement between the United Kingdom of Great Britain and Northern Ireland and the Cayman Islands for the avoidance of double taxation and the prevention of fiscal evasion ("the Arrangement") at Appendix 1 to this letter;

- that the Arrangement shall have effect in accordance with Paragraph 14 thereof;

- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

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

The United Kingdom welcomes this Arrangement as a significant step in establishing the Cayman Islands' status as a jurisdiction which complies with international standards in the field of taxation, and recognizes the Cayman Islands' commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

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

**The Rt. Hon. Stephen Timms MP**
**Financial Secretary to the Treasury**

Sir,

I have the honour to acknowledge receipt of your letter of 15th June 2009, which reads as follows:

" Sir,

I have the honour to propose to you –

- the Arrangement between the United Kingdom of Great Britain and Northern Ireland and the Cayman Islands for the avoidance of double taxation and the prevention of fiscal evasion ("the Arrangement") at Appendix 1 to this letter;

- that the Arrangement shall have effect in accordance with Paragraph 14 thereof;

- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

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

The United Kingdom welcomes this Arrangement as a significant step in establishing the Cayman Islands' status as a jurisdiction which complies with international standards in the field of taxation, and recognizes the Cayman Islands' commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

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

I am able to confirm that the Government of the Cayman Islands is in agreement with the contents of your letter dated 15th June 2009 and that this letter constitutes our mutual acceptance and making of the Arrangement contained in Appendix 1 to your letter and appended to this letter.

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

**The Hon. W. McKeeva Bush**
**Leader of Government Business**
**Cayman Islands Government**

15th June 2009

## PART 2

# ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE CAYMAN ISLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Cayman Islands ("the Governments");

Desiring to conclude an Arrangement for the avoidance of double taxation and the prevention of fiscal evasion;

Have arranged as follows:

### 1. Persons covered

This Arrangement shall apply to persons who are residents of one or both of the Territories.

### 2. Taxes covered

The taxes to which this Arrangement shall apply are the following United Kingdom taxes:

a) the income tax;
b) the corporation tax;
c) the capital gains tax; and for the purposes of Paragraph 13 only:

d) the inheritance tax;
e) the value added tax;

and any taxes which are identical or substantially similar to those taxes which are imposed by either Territory after the date of signature of this Arrangement. The competent authorities of the Territories shall notify each other of any significant changes that have been made in their taxation laws.

### 3. General definitions

1. For the purposes of this Arrangement, unless the context otherwise requires:

   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 sub-soil and their natural resources may be exercised;

   b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the sea bed and sub-soil and their natural resources may be exercised in accordance with international law;

   c) the terms "a Territory" and "the other Territory" mean the United Kingdom or the Cayman Islands, as the context requires;

   d) the term "person" includes an individual, a company and any other body of persons;

e) the term "competent authority" means:

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

(ii) in the Cayman Islands, the Cayman Islands Tax Information Authority.

f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes or which is otherwise treated as a body corporate under the law of a Territory;

g) the term "enterprise" applies to the carrying on of any business;

h) the term "enterprise of a Territory" and "enterprise of the other Territory" mean respectively an enterprise carried on by a resident of a Territory and an enterprise carried on by a resident of the other Territory;

i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which is a resident of and has its place of effective management in a Territory except where the ship or aircraft is operated solely between places in the other Territory.

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

**4. Resident**

1. For the purposes of this Arrangement, the term "resident of a Territory" means

a) in the case of the United Kingdom, any person who, under its laws, 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, and also includes the United Kingdom, and any political subdivision or local authority thereof. This term, however, does not include any person 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 Cayman Islands, any person who, under its laws, is recognised as a resident by reason of his domicile, residence, place of incorporation, place of management, or any other criterion of a similar nature and also includes the Cayman Islands.

2. Where by reason of the provisions of subparagraph 1 a person is a resident of both Territories, then that person shall be treated for the purposes of this Arrangement as a resident of the United Kingdom only.

3. Persons to whom subparagraph 2 applies shall not be subjected in the United Kingdom to taxation which is more burdensome than the taxation which applies to residents of the United Kingdom in the same circumstances to whom subparagraph 2 does not apply.

**5. Business profits of individuals**

1. Business profits derived by an individual shall be taxable only in the Territory in which he is resident unless he undertakes business in the other Territory. If he undertakes such business, his profits may be taxed in that other Territory, but only so much of them as is attributable to that business.

2. In determining the profits of such individual, there shall be allowed as deductions expenses which are incurred for the purposes of his business, including executive and general administrative

expenses so incurred, whether in the Territory in which the he undertakes the business or elsewhere.

3. Where profits include items of income 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.

4. No provision of this Paragraph shall be construed as restricting the right of a Territory to tax its residents.

**6. Profits and gains from shipping and air transport**

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

2. Gains derived by a resident of a Territory from the alienation of ships or aircraft operated in international traffic by an enterprise of that Territory, or moveable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Territory.

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

**7. Pensions**

1. Subject to the provisions of subparagraph 2 of Paragraph 8 (Government service), pensions and other similar remuneration paid to an individual who is a resident of a Territory, shall be taxable only in that Territory.

2. Notwithstanding the provisions of subparagraph 1, such payments which arise in the other Territory may also be taxed in that other Territory where the recipient has not been continuously a resident of the first-mentioned Territory either

a) for a period of 6 years immediately before the commencement of the payment of that pension, or

b) for a period of 6 years immediately before the commencement of the employment to which the pension relates.

**8. Government service**

1. a) Salaries, wages and other similar remuneration paid by a Territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Territory or subdivision or authority shall be taxable only in that Territory.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Territory if the services are rendered in that Territory and the individual is a resident of that Territory who did not become so resident solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of sub-paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Territory or subdivision or authority shall be taxable only in that Territory.

b) However, such pensions and other similar remuneration shall be taxable only in the other Territory if the individual is a resident of that other Territory and has been

continuously a resident of that other Territory either

(i) for a period of 6 years immediately before the commencement of the payment of that pension, or

(ii) for a period of 6 years immediately before the commencement of the employment to which the pension relates.

3. This Paragraph does not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Territory or a political subdivision or a local authority thereof.

**9. Students**

Payments received by a student or business apprentice who immediately before visiting a Territory was a resident of the other Territory under the laws of that other Territory, and who is present in the first-mentioned Territory solely for the purpose 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 first-mentioned Territory, provided that such payments arise outside that first-mentioned Territory, and are for the purpose of his maintenance, education or training. The exemption from tax provided by this Paragraph 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 Territory for the purpose of his training.

**10. Other income**

Items of income not dealt with in the foregoing Paragraphs of this Arrangement arising in a Territory and paid to a resident of the other Territory may be taxed in the first-mentioned Territory.

**11. Elimination of double taxation**

1. Where a resident of a Territory derives profits, income or gains which, in accordance with the provisions of this Arrangement, may be taxed in the other Territory, the first-mentioned Territory 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 tax paid in that other Territory. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income, profits or gains which may be taxed in that other Territory.

2. For the purposes of this Paragraph, profits, income and gains owned by a resident of a Territory which may be taxed in the other Territory in accordance with this Arrangement shall be deemed to arise from sources in that other Territory.

**12. Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those Territories, present his case to the competent authority of either Territory.

2. The competent authority shall endeavour, if the objection 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 Territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the

Territories, except such limitations as apply for the purposes of giving effect to such an agreement.

3. The competent authorities of the Territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

4. The competent authorities of the Territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding subparagraphs.

**13. Exchange of information and tax examinations**

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 covered by this Arrangement imposed on behalf of the Territories insofar as the taxation thereunder is not contrary to the Arrangement. The exchange of information is not restricted by Paragraph 1.

2. Any information received under subparagraph 1 by a Territory shall be treated as confidential 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 covered by this Arrangement, 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 may be used:

a) for other tax purposes with the express written consent of the competent authority of the Territory that provided the information; and

b) for any other purposes when such information may be used for such purposes under the laws of both Territories and the competent authority of the Territory that provided the information authorises such use in writing.

3. Information received under subparagraph 1 by a Territory shall not be disclosed to any other jurisdiction.

4. In no case shall the provisions of subparagraphs 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.

5. If information is requested by a Territory in accordance with this Paragraph, 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 subparagraph 4 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.

6. In no case shall the provisions of subparagraph 4 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.

7. A Territory may, in accordance with its law and pursuant to any procedures agreed by the competent authorities, allow representatives of the competent authority of the other Territory to enter its jurisdiction in order to interview persons, examine records or to conduct a tax examination in its jurisdiction.

**14. Entry into force**

1. Each of the Territories shall notify the other of the completion of the procedures required by its law for the bringing into force of this Arrangement. The Arrangement shall enter into force on the date of the later of these notifications and shall thereupon 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 6th April next following the date on which this Arrangement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Arrangement enters into force;

(iii) in respect of other taxes, for charges to tax arising on or after the date on which this Arrangement enters into force; and

b) in the Cayman Islands on those same dates.

2. The provisions of this Arrangement shall not impose upon a Territory any obligation to provide information under Paragraph 13 in respect of a taxable period or charge to tax as the case may be occurring prior to the later of the notification dates referred to in subparagraph 1.

**15. Termination**

1. This Arrangement shall remain in force until terminated by one of the Territories. Either of the Governments may on or before 30th June in any calendar year, give notice of termination to the other Government and, in such event, this Arrangement shall cease to have effect

a) in relation to relief from double taxation, at the end of the year of assessment or financial year immediately following receipt of that notice;

b) in relation to other matters, from the date of receipt of the notice.

2. In the event that this Arrangement is terminated,

a) all requests for information under Paragraph 13 received up to the effective date of termination will be dealt with in accordance with the terms of the Arrangement; and

b) the Territories shall remain bound by the confidentiality provisions in Paragraph 13 with respect to any information obtained under the Arrangement.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Schedule to this Order contains arrangements ("the Arrangements") dealing with the avoidance of double taxation and the prevention of fiscal evasion between the Government of the United Kingdom and the Government of the Cayman Islands. This Order brings the Arrangements into effect.

The Arrangements aim to eliminate the double taxation of income or gains arising in one country and paid to residents of the other country. They do this by allocating 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. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

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. They will take effect as follows:

(a) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which the arrangements enter into force;

(b) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the arrangements enter into force; and

(c) in respect of other taxes, for charges to tax arising on or after the date on which the arrangements enter into force.

The date 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.

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DRAFT STATUTORY INSTRUMENTS

**2010 No.**

**CAPITAL GAINS TAX**

**CORPORATION TAX**

**INCOME TAX**

**INHERITANCE TAX**

**VALUE ADDED TAX**

# The Double Taxation Relief and International Tax Enforcement (Cayman Islands) Order 2010

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