Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2009 No.

TAXES

The Double Taxation Relief and International Tax Enforcement (Luxembourg) Order 2009

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 788(10) of the Income and Corporation Taxes Act 1988(**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 788(1) of the Income and Corporation Taxes Act 1988 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 (Luxembourg) Order 2009.

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 Schedule 1 to this Order and in the Exchange of Notes set out in Schedule 2 to this Order, which vary the arrangements set out in the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, have been made with the Grand Duchy of Luxembourg;

(**a**) 1988 c.1: section 788 was extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c.12) and by section 194 of the Finance Act 1993 (c.34). Subsection (1) of section 788 was amended by section 88(1) of the Finance Act 2002 (c.23). Subsection (10) was substituted by section 176 of the Finance Act 2006 (c.25).

(**b**) 2006 c.25.

(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, petroleum revenue tax and taxes of a similar character imposed by the laws of Luxembourg 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 1

THIRD PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT LONDON ON 24TH MAY 1967 AS MODIFIED BY THE PROTOCOLS SIGNED AT LONDON ON 18TH JULY 1978 AND 28TH JANUARY 1983

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Grand Duchy of Luxembourg;

Desiring to conclude a Protocol amending the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at London on 24th May 1967, as amended by a first Protocol signed on 18th July 1978 and by a second Protocol signed on 28th January 1983 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article XXVIII of the Convention shall be deleted and replaced by the following:

"ARTICLE XXVIII

(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 on behalf of the Contracting States or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles I and II.

(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, or 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.

(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 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) 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) be construed to permit a Contracting State to decline to supply information upon request 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 2

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United Kingdom of Great Britain and Northern Ireland and in the Grand Duchy of Luxembourg. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

2. The Protocol shall enter into force on the date of the later of the notifications referred to in paragraph (1). The provisions of this Protocol shall have effect with regard to tax years beginning on or after January 1st of the calendar year next following the year of the entry into force of this Protocol.

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

DONE in duplicate at London , on the 2nd day of July 2009, in the English and French languages, both texts being equally authoritative.

For The Government of The United Kingdom of Great Britain and Northern Ireland**:**	For the Government of the Grand Duchy of Luxembourg:
Stephen Timms	*Luc Frieden*

SCHEDULE 2

London, 2nd July 2009

Excellency,

I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at London on 24th May 1967, as amended by a first Protocol signed on 18th July 1978, by a second Protocol signed on 28th January 1983 and by the Protocol signed today ("the Convention") and to make on behalf of the Government of the Grand Duchy of Luxembourg the following proposal:

With reference to Article XXVIII

(1) The competent authority of the requested State shall provide upon request by the competent authority of the applicant State information for the purposes referred to in Article XXVIII of the Convention.

(2) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:the identity of the person under examination or investigation;

(a) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(b) the tax purpose for which the information is sought;

(c) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(d) to the extent known, the name and address of any person believed to be in possession of the requested information;

(e) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with the Convention;

(f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

If the foregoing understanding meets with the approval of your Government, I have the further honour to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest considerations.

Luc Frieden

London, 2nd July 2009

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of July 2nd 2009, which reads as follows:

"I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at London on 24th May 1967, as amended by a first Protocol signed on 18th July 1978, by a second Protocol signed on 28th January 1983 and by the Protocol signed today ("the Convention") and to make on behalf of the Government of the Grand Duchy of Luxembourg the following proposal:

With reference to Article XXVIII

(1) The competent authority of the requested State shall provide upon request by the competent authority of the applicant State information for the purposes referred to in Article XXVIII of the Convention.

(2) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with the Convention;

(g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

If the foregoing understanding meets with the approval of your Government, I have the further honour to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol".

I have the honour to confirm that the foregoing understanding is acceptable for the Government of the United Kingdom of Great Britain and Northern Ireland and that your Note and this Note in reply shall constitute an Agreement between our two Governments.

Accept, Your Excellency, the expression of my highest considerations.

Stephen Timms

EXPLANATORY NOTE

(This note is not part of the Order)

Schedule 1 to this Order contains a Protocol amending the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, which was scheduled to the Double Taxation Relief (Taxes on Income) (Luxembourg) Order 1968 (S.I. 1968/1100).

Article 1 of this Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocol and the Exchange of Notes and provides that it is expedient that those arrangements should have effect.

A detailed explanation of the Protocol can be found in the Explanatory Memorandum published with this Order and which may be seen on the website of the office of Public Section Information at http://www.opsi.gov.uk/stat.htm.

The Protocol will enter into force on the date of the later of the notifications by each party of the completion of its legislative procedures. It will have effect with regard to tax years beginning on or after January 1st next following the date of entry into force of the Protocol.

The Exchange of Notes set out in Schedule 2 to this Order clarifies the intended interpretation of particular aspects of the Protocol.

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 instrument because it is considered that its impact on the private and voluntary sectors will be negligible.

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