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

The Double Taxation Relief and International Tax Enforcement (Mexico) 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—

Citation

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

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 the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on

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

Income) (Mexico) Order 1994(**a**), have been made with the Government of the United Mexican States;

(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 United Mexican States 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

(**a**) S.I. 1994/3212.

SCHEDULE

Article 2

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES TO AMEND THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT MEXICO CITY ON 2 JUNE 1994

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States;

Desiring to conclude a Protocol to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Mexico City on 2nd June 1994 (hereinafter referred to as "the Convention");

Have agreed upon the following provisions, which shall be an integral part of the Convention:

ARTICLE I

Sub-paragraph (a) of paragraph (1) of Article 2 of the Convention shall be replaced by:

"(a) in the case of Mexico:

(i) the income tax (el impuesto sobre la renta);

(ii) the business flat rate tax (el impuesto empresarial a tasa unica);

(hereinafter referred to as "Mexican tax");".

ARTICLE II

1. Paragraphs (1) and (2) of Article 10 of the Convention shall be replaced by:

"(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However:

(a) except as provided in sub-paragraph (b), such dividends shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident, if the beneficial owner of the dividends is a resident of the other Contracting State;

(b) other than where the beneficial owner of the dividends or distributions is a pension scheme, dividends or distributions paid out of income derived from immovable property within the meaning of Article 6 by an investment vehicle:

(i) which distributes most of this income annually; and

(ii) whose income from such immovable property is exempted from tax;

may be taxed in the Contracting State where the investment vehicle is resident but if the beneficial owner of the dividends or distributions is a resident of the other Contracting State the tax so charged shall not exceed 15 per cent of the gross amount of the dividends or distributions.

This paragraph shall not affect the taxation of the company or trust in respect of the profits out of which the dividends or distributions are paid.

In the case of Mexico distributions referred to in sub-paragraph (b) above mean 'the distributed taxable result' of real estate trusts referred to in articles 223 and 224 of the Income Tax Law or the distributions made by any other immovable property investment vehicle which may be incorporated in the Mexican legislation, where the conditions of such sub-paragraph are met."

2. The following paragraph shall be inserted after paragraph (5) of Article 10 of the Convention:

"(6) The provisions of paragraph (2) of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividends are paid to take advantage of this Article by means of that creation or assignment."

ARTICLE III

Article 27 of the Convention shall be deleted and replaced by the following:

"ARTICLE 27
EXCHANGE OF INFORMATION

(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 this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Articles 1 and 2 of this Convention.

(2) Any information received under paragraph (1) of this Article 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) of this Article, 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) of this Article 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.

(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) of this Article 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) of this Article be construed to permit a Contracting State 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 fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE IV

The following Article shall be added after Article 27 of the Convention.

"ARTICLE 27A
ASSISTANCE IN THE COLLECTION OF TAXES

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of 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 this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this Article, a revenue

claim accepted by a Contracting State for purposes of paragraph (3) or (4) of this Article shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph (3) or (4) of this Article shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph (3) or (4) of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph (3) of this Article, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph (4) of this Article, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensuring its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

ARTICLE V

The Governments of the Contracting States shall notify one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of receipt of the later of such notifications. It shall have effect in relation to information referred to in Article III of this Protocol and to requests for assistance referred to in Article IV of this Protocol in respect of such information or assistance that is requested on or after the date of entry into force of this Protocol. In relation to the business flat rate tax (el impuesto empresarial a tasa unica) the Protocol shall have effect from 1 January 2008.

ARTICLE VI

This Protocol shall remain in force as long as the Convention remains in force.

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

DONE in duplicate at Mexico City, Mexico, on the 23rd day of April 2009, in the English and Spanish languages, both texts being equally authoritative.

For The Government of The United Kingdom of Great Britain and Northern Ireland	For the Government of the United Mexican States
Giles Paxman	*A G Carstens*

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol ("the Protocol") which amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, which was scheduled to the Double Taxation Relief (Taxes on Income) (Mexico) Order 1994 (S.I. 1994/3212) ("the Convention"). This Order brings the Protocol into effect.

The Convention aims to eliminate the double taxation of income or gains 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 gains, 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 Protocol continues that approach.

The Protocol amends Article 2 of the Convention to provide for the inclusion of the Mexican business flat rate tax. Article 10 is amended to provide for exemption from taxation of dividends in the circumstances set out in the amending provisions. Article 27 is replaced and updated to bring it into line with the new international standard for exchange of information as set out in the Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development ("OECD"). It also provides for the exchange of information foreseeably relevant to taxes of every kind and description imposed by the two countries. The newly inserted Article 27A provides rules under which the two countries may provide assistance to each other in the collection of their taxes.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocol.

The Protocol will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It shall have effect in relation to the exchange of information and requests for assistance made on or after the date of entry into force of the Protocol. In relation to the Mexican business flat rate tax, the Protocol shall have effect from 1st January 2008.

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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