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

2013 No. 0000

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Panama) 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 (Panama) Order 2013.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Convention and Protocol set out in the Schedule to this Order have been made with the Government of the Republic of Panama;

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

(b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of the Republic of Panama and for the purposes 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

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF PANAMA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The United Kingdom of Great Britain and Northern Ireland and the Republic of Panama, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, have agreed as follows:

Chapter I

Scope of the Convention

Article 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Panama:

The income tax provided in the *Fiscal Code*, *Book IV*, *Title I*, and its related decrees and regulations

(hereinafter referred to as “Panamanian tax”);

b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as “United Kingdom tax”).

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Chapter II

Definitions

Article 3

General Definitions

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

a) the term "Panama" means the Republic of Panama and, when used in a geographical sense, means the territory of the Republic of Panama, including inland waters, its airspace, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Republic of Panama exercises, or may exercise in the future, jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

b) 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;

c) the terms "a Contracting State" and "the other Contracting State" mean Panama or the United Kingdom as the context requires;

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

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term ‘‘enterprise’’ applies to the carrying on of any business;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "competent authority" means:

(i) in Panama, the Ministry of Economy and Finance or its authorized representative;

(ii) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorized representatives;

j) the term "national" means:

(i) in relation to Panama, any individual possessing the nationality of Panama; and any legal person, partnership or association deriving its status as such from the laws in force in Panama;

(ii) 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; and any legal person, partnership or association deriving its status as such from the laws in force in the United Kingdom;

k) the term “business” includes the performance of professional services and of other activities of an independent character;

l) the term “pension scheme” means any scheme or other entity established in a Contracting State which operates to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements and

(i) in the case of Panama, is organized in accordance with Law 10 of 16 April 1993; and

(ii) in the case of the United Kingdom, is generally exempt from income taxation and is a pension scheme (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes.

2. As regards the application of the Convention at any time by a Contracting State, 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 State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes the State itself and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in the Contracting State in respect only of income or capital gains from sources in that State.

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 settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention, except those provided by Articles 21, 22 and 23.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities last more than nine months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State performs services in the other Contracting State

a) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual; or

b) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State

the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 6 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.

5. For the purposes of determining the duration of activities under paragraphs 3 and 4, the

period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on activities for the enterprise of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom the provisions of paragraph 8 applies, is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect to any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III

Taxation of Income

Article 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Where shares or other rights in a company, trust or any other institution or entity give an entitlement to the enjoyment of immovable property situated in a Contracting State and held by that company, trust, institution or entity, income derived from that entitlement may be taxed in that State.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

2. For the purposes of this Article and Article 21, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

a) profits from the rental on a bareboat basis of ships or aircraft; and

b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

Article 9

Associated Enterprises

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10

Dividends

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, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends 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.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed 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 and is:

a) a company, the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 15 per cent of the capital of the company paying the dividends, provided that:

(i) the shares of the company receiving the dividends are regularly traded on a recognized stock exchange; or

(ii) at least 50 per cent of the shares of the company receiving the dividends are owned directly or indirectly by one or more individuals who are residents of either Contracting State or by one or more companies the shares of which are regularly traded on a recognized stock exchange, but only if the last-mentioned companies:

(aa) are residents of either Contracting State; or

(bb) would be entitled to benefits which are similar to or more favourable than the benefits provided by this paragraph pursuant to a comprehensive arrangement for the avoidance of double taxation between their state of residence and the Contracting State from which the benefits of this paragraph are claimed or pursuant to a multilateral agreement to which their state of residence and the Contracting State from which the benefits of this paragraph are claimed, are a party; or

(iii) the company receiving the dividends is engaged in the active conduct of a trade or business in the Contracting State of which it is a resident (other than the activities of making or managing investments for the resident's own account, unless these activities are banking or insurance carried on by a bank or an insurance company);

b) a Contracting State, or a political subdivision or local authority thereof; or

c) a pension scheme.

4. Where a company meets the conditions in subparagraph a) of paragraph 3 but does not meet any of the conditions in clauses i), ii) or iii) of that subparagraph, it may however receive the benefits of paragraph 3 if the competent authority of the Contracting State which has to grant the benefits determines that it was not the main purpose or one of the main purposes of any person concerned with the establishment, acquisition or maintenance of that company to secure the benefits of paragraph 3.

The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

5. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraphs 2, 3 and 4.

6. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

7. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as any other item that is treated as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

8. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment

situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

9. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

10. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

Article 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State and at least one of the conditions specified in paragraph 4 of this Article is met, the tax so charged shall not exceed 5 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, if

a) the beneficial owner of the interest is a Contracting State, the Central Bank of a Contracting State, any of its political subdivisions or local authorities;

b) the interest is paid in relation with the sale on credit of merchandise or equipment to an enterprise of a Contracting State;

c) the interest is paid to other entities or bodies (including financial institutions) as a result of financing provided by such institutions or bodies in connection with agreements concluded between the Governments of the Contracting States; or

d) the beneficial owner of the interest is a pension scheme.

4. The conditions referred to in paragraph 2 are that:

a) the interest is beneficially owned by:

(i) an individual;

(ii) a company whose principal class of shares is regularly traded on a recognized stock exchange;

(iii) a financial institution which is unrelated to and dealing wholly independently with the payer; or

(iv) a company other than a company mentioned under sub-paragraphs (ii) or (iii) provided that the competent authority of the Contracting State which has to grant the benefits determines that it was not the main purpose or one of the main purposes of any person concerned with the establishment, acquisition or maintenance of that company to secure the benefits of this Article;

b) the interest is paid:

(i) by a Contracting State, a political subdivision or local authority thereof;

(ii) by a bank in the ordinary course of its banking business; or

(iii) on a quoted Eurobond.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures. Penalty charges for a late payment shall not be regarded as interest for the purpose of this Article. The term shall not include any item which is treated as a dividend under the provisions of Article 10.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner of the interest in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, or with the creation or assignment of the debt-claim in respect of which the interest is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the interest and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including, cinematograph films, any patent, trade mark, design or model, plan, secret formulas or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information (know how) concerning industrial commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by the permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the royalties and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with

the whole enterprise), may be taxed in that other State.

3. Gains derived by an enterprise resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived from the alienation of shares or other comparable rights in a company which is a resident of a Contracting State by a resident of the other Contracting State holding an interest representing more than 10 per cent of the voting power, value or capital in that company may be taxed in the first-mentioned State if the alienator had held directly or indirectly such shares or rights for a period of less than 12 months preceding the alienation.

5. Notwithstanding the provisions of paragraph 4, gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a recognized stock exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State of which the enterprise that operates the ship or aircraft is a resident.

Article 15

Directors' Fees

Directors' fees and other similar payments, derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

Article 16

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17

Pensions

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if they arise in that State.

Article 18

Government Service

1. Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

a) is a national of that State; or

b) did not become a resident of that State solely for the purpose of rendering the services;

and is subject to tax in that State on such salaries, wages and other similar remuneration.

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 20

Other income

1. Items of income beneficially owned by a resident of a Contracting State, wherever

arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of the Convention.

4. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the income and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

Chapter IV

Methods for Elimination of Double Taxation

Article 21

Elimination of Double Taxation

Double taxation shall be avoided as follows:

1. In Panama,

   a) Where a resident of Panama derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Panama will exempt such income from taxes;

   b) Where in accordance with any provision of the Convention income derived by a resident of Panama is exempt from tax in Panama, Panama may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income.

2. In the United Kingdom,

Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom or of the profits of a permanent establishment situated in a territory outside the United Kingdom (which shall not affect the general principle hereof):

   a) Panamanian tax payable under the laws of Panama and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Panama (excluding, in the case of a dividend, tax payable in respect

of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Panamanian tax is computed;

b) a dividend which is paid by a company which is a resident of Panama to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax, when the conditions for exemption under the law of the United Kingdom are met;

c) the profits of a permanent establishment in Panama of a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;

d) in the case of a dividend not exempted from tax under sub-paragraph b) above which is paid by a company which is a resident of Panama to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in sub-paragraph a) above shall also take into account the Panamanian tax payable by the company in respect of its profits out of which such dividend is paid.

3. For the purposes of paragraphs 1 and 2, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

Chapter V

Special Provisions

Article 22

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 or 9 of Article 11, or paragraph 6 or 7 of Article 12, or paragraph 3 or 4 of Article 20 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident or to its nationals.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

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

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

5. The competent authorities may also agree on other forms of resolution when a mutual agreement cannot be reached.

Article 24

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 of the Contracting States 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 1 and 2.

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, 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.

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 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 owner ship interests in person.

Article 25

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Chapter VI

Final Provisions

Article 26

Entry into Force

1. Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

a) in Panama:

(i) in respect of withholding taxes, on income derived on or after January 1st of the calendar year following the year in which this Convention enters into force;

(ii) in respect of income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after January 1st of the calendar year following the year in which this Convention enters into force; and

(iii) in respect of the exchange of information:

(aa) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting State, from the date of entry into force; and

(bb) for all other matters, from that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

b) in the United Kingdom:

(i) in respect of withholding taxes, on income derived on or after January 1st of the calendar year following the year in which this Convention enters into force;

(ii) 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 Convention enters into force;

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

(iv) in respect of the exchange of information:

(aa) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting State, from the date of entry into force; and

(bb) for all other matters, from that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

Article 27

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

a) in Panama:

(i) with respect to withholding taxes, on income derived on or after January 1st of the calendar year following the year in which the notice of termination is given;

(ii) with respect to income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after January 1st of the calendar year following the year the notice of termination is given;

b) in the United Kingdom:

(i) with respect to withholding taxes, on income derived on or after January 1st of the calendar year following the year in which the notice of termination is given;

(ii) 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 notice is given;

(iii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the notice is given.

Done in duplicate at London this 29th day of July 2013 in the English and Spanish and languages, both texts being equally authoritative.

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

WILLIAM HAGUE
Secretary of State for Foreign and Commonwealth Affairs

FOR THE REPUBLIC OF PANAMA

FERNANDO NÚÑEZ FÁBREGA
Minister of Foreign Affairs

PART 2

PROTOCOL TO THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF PANAMA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, this day concluded between the United Kingdom of Great Britain and Northern Ireland and the Republic of Panama, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In relation to Article 2:

It is understood that the provisions of this Convention shall not apply with regard to the charges, tolls, duties or similar payments that might be applicable upon transiting the Panama Canal.

2. In relation to Article 4:

It is understood that the term “resident of a Contracting State” includes:

a) a pension scheme established in that State; and

b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

3. In relation to Article 10:

It is understood that a determination under paragraph 4 shall be based on all facts and circumstances including:

a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;

b) both the historical and the current ownership of the company; and

c) the business reasons for the company residing in its country of residence.

4. In relation to Article 11:

It is understood that the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing financing.

5. In relation to Articles 10, 11 and 13:

It is understood that the term "recognized stock exchange" means:

a) any of the stock exchanges in the member states of the European Union;

b) the Panama Stock Exchange;

c) the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934, the Mexican Stock Exchange (*Bolsa Mexicana de Valores)* and the Toronto Stock Exchange; and

d) any other stock exchange agreed upon by the competent authorities of the Contracting States, provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

6. In relation to Article 20:

It is understood that, notwithstanding the provisions of paragraph 1 of that Article, where an amount of income is paid to a resident of a Contracting State out of income received by trustees or personal representatives administering the estates of deceased persons and those trustees or personal representatives are residents of the other Contracting State, that amount shall be treated as arising from the same sources, and in the same proportions, as the income received by the trustees or personal representatives out of which that amount is paid.

Any tax paid by the trustees or personal representatives in respect of the income paid to the beneficiary shall be treated as if it had been paid by the beneficiary.

7. In relation to Article 24:

It is understood that:

a) the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in Article 24;

b) information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure;

c) the reference to “foreseeably relevant” information is intended to provide for exchange of information in tax matters to the widest possible extent, though Contracting States are not at liberty to request information that is unlikely to be relevant to the tax affairs of a given taxpayer (“fishing expeditions”);

d) the competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 24 of the Convention:

(i) the identity of the person(s) under examination or investigation (including, if applicable, particulars facilitating that person’s identification);

(ii) the period of time for which the information is requested;

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

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

(v) 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;

(vi) to the extent known, the identity of any person believed to be in possession of the requested information;

(vii) a statement that the requesting State has pursued and exhausted all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties;

e) the Convention shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis;

f) in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable during the exchange of information process. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

Done in duplicate at London this 29th day of July 2013 in the English and Spanish languages, both texts being equally authoritative.

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

WILLIAM HAGUE
Secretary of State for Foreign and Commonwealth Affairs

FOR THE REPUBLIC OF PANAMA

FERNANDO NÚÑEZ FÁBREGA
Minister of Foreign Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Convention and a Protocol ("the Arrangements") between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama dealing with the avoidance of double taxation and the prevention of fiscal evasion. This Order brings the Arrangements into effect.

The Arrangements aim to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done 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 the United Kingdom:

  (i) in respect of withholding taxes, on income derived on or after 1 January of the calendar year following the date of entry into force;

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

  (iii) in respect of corporation tax, for any financial year beginning on or after 1 April next following the date of entry into force; and

(b) in Panama:

  (i) in respect of withholding taxes, on income derived on or after 1 January of the calendar year following the date of entry into force;

  (ii) in respect of income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after 1 January of the calendar year 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 produced for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.

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