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

2021 No. 0000

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Taiwan) Order 2021

Made - - - - ***

At ***, the *** day of *** 2021

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 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 (Taiwan) Order 2021.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

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

(a) the arrangements specified in the Protocol set out in the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Taiwan) Order 2002(**a**), have been made in relation to the territory of Taiwan;

(b) those arrangements have been made with a view to the elimination of double taxation with respect to capital gains tax, corporation tax, income tax and taxes of a similar character imposed by the laws of Taiwan, the prevention of tax avoidance and evasion, 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. 2002/3137.

SCHEDULE

Article 2

**PROTOCOL AMENDING THE AGREEMENT
BETWEEN
THE BRITISH TRADE AND CULTURAL OFFICE, TAIPEI
AND
THE TAIPEI REPRESENTATIVE OFFICE IN THE UNITED KINGDOM
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS, AND THE ANNEX THERETO, SIGNED AT LONDON ON 8 APRIL 2002**

The British Office Taipei and the Taipei Representative Office in the United Kingdom;

Desiring to amend the Agreement between the British Trade and Cultural Office, Taipei and the Taipei Representative Office in the United Kingdom, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, and the Annex thereto, signed at London on 8 April 2002 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE I

The title of the Agreement shall be deleted and replaced by the following:

*AGREEMENT
BETWEEN
THE BRITISH OFFICE TAIPEI
AND
THE TAIPEI REPRESENTATIVE OFFICE IN THE UNITED KINGDOM
FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS AND THE PREVENTION OF TAX EVASION AND AVOIDANCE*

ARTICLE II

The preamble of the Agreement shall be deleted and replaced by the following:

"The British Office Taipei and the Taipei Representative Office in the United Kingdom, hereinafter referred to as the BOT and the TRO;

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters;

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and on capital gains without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States);

Have agreed as follows:"

ARTICLE III

The term "British Trade and Cultural Office, Taipei" and its initials "BTCO" used in the Agreement shall be replaced by "British Office Taipei" and "BOT" respectively. The British Office Taipei shall fully assume the rights, responsibilities, and status of the British Trade and Cultural Office, Taipei.

ARTICLE IV

The term "United Kingdom Inland Revenue" used in the Agreement shall be replaced by "United Kingdom HM Revenue and Customs".

ARTICLE V

1. The following paragraph (2) shall be inserted in ARTICLE 1 (Persons covered) of the Agreement:

> *"For the purposes of this Agreement, income or gains derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either territory shall be considered to be income or gains of a resident of a territory but only to the extent that the income or gain is treated, for purposes of taxation by that territory, as the income or gain of a resident of that territory."*

2. The following paragraph (3) shall be inserted in ARTICLE 1 (Persons covered) of the Agreement:

> *"This Agreement shall not affect the taxation, by a territory, of its residents except with respect to the benefits granted under paragraph (2) of Article 9, paragraph (3) of Article 18 and Articles 19, 20, 22, 24 and 25."*

ARTICLE VI

Paragraph (3)(b) of ARTICLE 2 (Taxes covered) of the Agreement shall be deleted and replaced by the following:

> *"in the territory in which the taxation law administered by the Taxation Administration, Ministry of Finance, Taipei is applied:*
>
> *(i) the profit seeking enterprise income tax;*
>
> *(ii) the individual consolidated income tax; and*
>
> *(iii) the income basic tax."*

ARTICLE VII

Paragraph (1)(f)(ii) of ARTICLE 3 (General definitions) of the Agreement shall be deleted and replaced by the following:

> *"in the case of the territory in which the taxation law administered by the Taxation Administration, Ministry of Finance, Taipei is applied, the Minister of Finance or his authorised representative."*

ARTICLE VIII

Paragraph (4) of ARTICLE 4 (Residence) of the Agreement shall be deleted and replaced by the following:

> *"Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both territories, the competent authorities of the territories shall endeavour to determine by mutual agreement the territory of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other*

relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement, except to the extent and in such manner as may be agreed upon by the competent authorities of the territories."

ARTICLE IX

1. Paragraph (2) of ARTICLE 10 (Dividends) of the Agreement shall be deleted and replaced by the following:

"However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory:

(a) except as provided in sub-paragraph (b), the tax so charged shall not exceed 10 per cent. of the gross amount of the dividends;

(b) where dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax, the tax charged by the territory of which the company paying the dividends is a resident shall not exceed 15 per cent. of the gross amount of the dividends other than where the beneficial owner of the dividends is a pension scheme established in the other territory, where the exemption provided in sub-paragraph (a) shall apply.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. The competent authorities of the territories shall by mutual agreement settle the mode of application of this limitation."

2. Paragraph (6) of ARTICLE 10 (Dividends) of the Agreement shall be deleted.

ARTICLE X

1. Paragraph (4) of ARTICLE 11 (Interest) of the Agreement shall be deleted and replaced by the following:

"The provisions of paragraphs (1), (2) and (7) of this Article shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply."

2. Paragraph (7) to (9) of ARTICLE 11 (Interest) of the Agreement shall be deleted and replaced by the following:

"(7) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a territory shall be exempt from tax in that territory if:

(a) it is paid to and beneficially owned by the other territory or a local authority thereof, or any agency or instrumentality of that other territory or local authority thereof; or

(b) it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by an approved agency or instrumentality of that other territory.

(8) For the purposes of paragraph (7)(b) of this Article the term "approved agency or instrumentality" means:

(a) in the case of the territory referred to in paragraph (3)(a) of Article 2 of this Agreement, the Export Credits Guarantee Department and such other agencies and instrumentalities of that territory as may be agreed from time to time between the competent authorities;

(b) in the case of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement, such agencies and instrumentalities of that territory as may be agreed from time to time between the competent authorities."

ARTICLE XI

Paragraph (7) of ARTICLE 12 (Royalties) of the Agreement shall be deleted.

ARTICLE XII

Paragraph (2) of ARTICLE 13 (Capital gains) of the Agreement shall be deleted and replaced by the following:

"Gains derived by a resident of a territory from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, such as interests in a partnership or trust, deriving more than 50 per cent. of their value directly or indirectly from immovable property, as defined in Article 6, situated in the other territory may be taxed in that other territory."

ARTICLE XIII

Paragraph (2) of ARTICLE 23 (Limitation of relief) of the Agreement shall be deleted. The current text of paragraph (3) shall become paragraph (2).

ARTICLE XIV

Paragraph (4) of ARTICLE 24 (Non-discrimination) of the Agreement shall be deleted and replaced by the following:

"Except where the provisions of paragraph (1) of Article 9, paragraph (5) of Article 11, paragraph (6) of Article 12, paragraph (4) of Article 21, or Article 27 of this Agreement apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory 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 territory."

ARTICLE XV

The text of ARTICLE 25 (Mutual agreement procedure) of the Agreement shall be deleted and replaced by the following:

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

(2) *The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the territories.*

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

(4) *The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs."*

ARTICLE XVI

The text of ARTICLE 26 (Exchange of information) of the Agreement shall be deleted and replaced by the following:

"(1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of domestic laws concerning taxes of every kind and description imposed on behalf of the territories, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) *Any information received under paragraph (1) by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1), or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorises such use.*

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

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

(b) *to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other territory;*

(c) *to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.*

(4) *If information is requested by a territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3)*

but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

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

ARTICLE XVII

The following ARTICLE shall be inserted, and ARTICLE 27 (Entry into force) and ARTICLE 28 (Termination) of the Agreement shall become ARTICLE 28 and ARTICLE 29 respectively:

"ARTICLE 27 Entitlement to benefits

(1) Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or a capital gain if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

(2) Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the territory that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or a capital gain, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the territory to which the request has been made will consult with the competent authority of the other territory before rejecting a request made under this paragraph by a resident of that other territory."

ARTICLE XVIII

1. The British Office Taipei and the Taipei Representative Office in the United Kingdom shall each notify to the other the completion of the procedures required by the law of their respective territories for the bringing into force of this Protocol.

2. The Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the territory in which the taxation laws administered by the Taxation Administration, Ministry of Finance, Taipei are applied:

(i) in respect of taxes due or withheld at source, on income payable on or after 1st January of the calendar year next following the date on which this Protocol enters into force;

(ii) in respect of other taxes charged, on income of taxable periods beginning on or after 1st January of the calendar year next following the date on which this Protocol enters into force;

(iii) in respect of requests made under Article 26 (Exchange of information), for information that relates to tax payable or a taxable year beginning on or after 1st

January of the calendar year next following the date on which this Protocol enters into force;

(b) in the territory in which the taxation laws administered by Her Majesty's Revenue and Customs in the United Kingdom are applied:

(i) in respect of taxes withheld at source, on amounts paid or credited on or after 1st January of the calendar year next following the date on which this Protocol enters into force;

(ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Protocol enters into force;

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

(iv) in respect of requests made under Article 26 (Exchange of information), for information that relates to any year of assessment or financial year beginning on or after 1st April in the calendar year next following that in which this Protocol enters into force.

ARTICLE XIX

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

In witness where of the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London this 11th day of August 2021 and at Taipei this 19th day of August 2021 in the English and Chinese languages, both texts being equally authentic. In the case of any divergence of meaning between the two texts, the English text shall prevail.

For the British Office Taipei

_____
John Dennis
Representative, British Office Taipei

For the Taipei Representative Office in the United Kingdom

_____
Wu-Chiao Hsieh
Representative, Taipei Representative Office in the United Kingdom

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains a protocol ("the Protocol") which amends an agreement in relation to the territory of Taiwan dealing with the elimination of double taxation with respect to capital gains tax, corporation tax and income tax, the prevention of tax avoidance and evasion, and international tax enforcement ("the Agreement"). The Order brings the Protocol into effect.

The Agreement was scheduled to the Double Taxation Relief (Taxes on Income) (Taiwan) Order 2002 (S.I. 2002/3137).

The Agreement aims to eliminate the double taxation of income and gains arising in one territory and paid to residents of the other territory. This is done by allocating the taxing rights that each territory has under its domestic law over the same income and gains, and by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The Protocol continues this approach.

Article 1 of the Order provides for citation and article 2 of the Order makes a declaration as to the effect and content of the Protocol.

Amendments are made to the title of, and the preamble to, the Agreement and the Articles of the Agreement relating to persons covered, taxes covered, general definitions, residence, dividends, interest, royalties, capital gains, limitation of relief, non-discrimination, mutual agreement procedure and exchange of information. An Article relating to entitlement to benefits is added to the Agreement.

The Protocol will enter into force on the date of the later of the notifications by each territory of the completion of its legislative procedures, and will take effect in each territory in accordance with paragraph 2 of Article XVIII of the Protocol.

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 the Order as it gives effect to a double taxation agreement. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.

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