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

DRAFT STATUTORY INSTRUMENTS

2007 No.

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Faroes) Order 2007

Made - - - - ***

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 788(10) of the Income and Corporation Taxes Act 1988(**a**) and section 173(7) of the Finance Act 2006(**b**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 788(1) of the Income and Corporation Taxes Act 1988 and section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Faroes) Order 2007.

Double Taxation arrangements to have effect

2. It is declared that—

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

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

(a) the arrangements specified in the Agreement set out in Part 1 of the Schedule to this Order and in the Protocol set out in Part 2 of that Schedule have been made with the Government of the Faroes with a view to affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character imposed by the laws of the Faroes;

(b) those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration, enforcement or recovery of the taxes, and debts relating to the taxes, covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes;

(c) those arrangements also include provisions with respect to the assistance in the collection of taxes; and

(d) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

PART 1

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

Considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of the Faroes, the Government of the Faroes and the Government of the United Kingdom of Great Britain and Northern Ireland;

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:

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, as well as taxes on capital appreciation.

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

(a) in the Faroes:

(i) the national tax on income (landsskattur);

(ii) the municipal tax on income (kommunuskattur);

(iii) the tax on capital gains (kapitalvinningsskattur);

(iv) the tax on royalty (skattur av nýtslugjaldi); and

(v) the tax on revenue relating to hydrocarbon activities (skattur eftir kolvetnisskattalógini);

(hereinafter referred to as "Faroese tax")

(b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(iv) the petroleum revenue tax; and

(v) the supplementary charge in respect of ring fence trades;

(hereinafter referred to as "United Kingdom tax").

(4) This Convention shall also apply 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.

ARTICLE 3

General definitions

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

(a) the term "Faroes" means the landmass of the Faroes and its territorial waters and any area outside the territorial waters where the Faroes according to Faroese legislation and in accordance with international law, may exercise its rights with respect to the seabed and subsoil 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 term “national” means:

(i) in relation to the Faroes, any individual possessing the nationality of Denmark and who is resident in the Faroes and any legal person, partnership or association deriving its status as such from the law in force in the Faroes;

(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, association or other entity deriving its status as such from the laws in force in the United Kingdom;

(d) the term "tax" means Faroese tax or United Kingdom tax, as the context requires;

(e) the terms "a Contracting State" and "the other Contracting State" mean the Faroes or the United Kingdom, as the context requires;

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

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

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

(i) 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;

(j) 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;

(k) the term "competent authority" means:

(i) in the case of the Faroes, the Minister of Finance or his authorised representative;

(ii) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;

(l) the term "business" includes the performance of professional services and of other activities of an independent character.

(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 purpose 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 management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(2) The term “resident of a Contracting State” includes

(a) a person established in a Contracting State under the laws of that State who is generally exempt from income taxation in that State and who operates, administers or provides pension or retirement benefits or earns income for the benefit of one or more arrangements providing pension or retirement benefits; 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) Where by reason of the provisions of paragraph 1 of this Article 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 Contracting 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 Contracting State in which he has his centre of vital interests cannot be determined, or if he has not 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 Contracting 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(4) Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

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, construction, installation or assembly project, or on-site supervisory or consultancy services connected therewith, constitute a permanent establishment only if such site, project or services continues for more than twelve months.

(4) Notwithstanding the provisions of paragraph 3 of this Article, a project for the construction or installation of a pipeline for the transportation of oil or gas, or a building site associated with such construction or installation, shall constitute a permanent establishment whether or not it lasts for more than 12 months.

(5) 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, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs 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.

(6) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 7 of this Article 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 of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 of this Article 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.

(7) 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.

(8) 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.

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, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business profits

(1) The 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 of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) 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 of this Article 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 Contracting 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:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividend;

(b) 15 per cent of the gross amount of the dividends in all other cases.

(3) Notwithstanding the provisions of paragraph 2 of this Article, 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 who operates or administers in that other Contracting State a plan, scheme, trust or other arrangement established in that other Contracting State which is

(a) generally exempt from taxation in that other State and

(b) is operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements

where those dividends are attributable to such arrangements.

Paragraphs 2 and 3 of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(4) 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 income from other corporate rights and any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraphs 1, 2 and 3 of this Article 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.

(6) 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.

(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 the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) 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, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payments 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.

(3) The provisions of paragraph 1 of this Article 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.

(4) 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 interest paid 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.

(5) 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 debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) 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, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph 1 of this Article 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.

(4) 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 paid 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 that 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.

(5) 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 royalties are paid to take advantage of this Article by means of that creation or assignment.

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 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 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.

(3) 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.

(4) Gains derived by a 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.

(5) Gains derived by a resident of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods and merchandise in international traffic shall be taxable only in that State.

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

(7) The provisions of paragraph 6 of this Article shall not affect the right of a Contracting State to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal years, a resident of that Contracting State or on a person who is a resident of that Contracting State at any time during the fiscal year in which the property is alienated.

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 of this Article and subject to paragraph 3 of this Article, 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 period of 12 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

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 or of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Artistes and sportsmen

(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 sportsman, 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 sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

ARTICLE 17

Pensions and social security payments

(1) Subject to the provisions of paragraphs 2 and 3 of this Article and of paragraph 2 of Article 18, pensions and other similar remuneration paid (including annuities paid as part of a pension arrangement) to an individual who is a resident of a Contracting State, shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1 of this Article, payments received by an individual who is a resident of a Contracting State, under the social security legislation of the other Contracting State, shall be taxable only in that other State.

(3) Notwithstanding the provisions of paragraph 1 of this Article, a lump sum payment derived from a pension scheme established in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in the first-mentioned State.

(4) Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State ("the host state") to a pension scheme that is recognised for tax purposes in the other Contracting State ("the home state") shall, for the purposes of:

(a) determining the individual's tax payable in the host state; and

(b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

(5) Paragraph 4 of this Article applies only if the following conditions are met:

(a) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and

(b) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

(6) For the purposes of paragraphs 4 and 5 of this Article, a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if payments made to the scheme by the individual's employer are not deemed in that State to be taxable income of the individual.

ARTICLE 18

Government service

(1) (a) Salaries, wages and other similar remuneration, other than a pension, 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.

(b) 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:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) (a) Any pension paid by, or out of funds created 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.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, 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, which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1 of this Article, the following provisions shall apply with respect to income paid out of trusts or the estates of deceased persons in the course of administration:

Where such income is paid to a beneficiary who is a resident of a Contracting State by trustees or personal representatives who are residents of the other Contracting State out of income received by those trustees or personal representatives which would, if those trustees or personal representatives had been residents of the first-mentioned State, have fallen within other Articles of this Convention, the beneficiary shall be treated as having received an amount of the income received by the trustees or personal representatives corresponding to the income received by him and any tax paid by the trustees or personal representatives on that amount shall be treated as having been paid by the beneficiary.

(3) The provisions of paragraph 1 of this Article 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.

(4) Where, by reason of a special relationship between the resident referred to in paragraph 1 of this Article 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 a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

(5) The provisions 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 rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 21

Miscellaneous rules applicable to certain offshore activities

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on offshore in connection with preliminary surveys, exploration for or exploitation of the seabed and subsoil and their natural resources (in this Article called "offshore activities") situated in a Contracting State.

(2) An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

(3) Notwithstanding the provisions of paragraph 2 of this Article, profits derived by an enterprise of a Contracting State from transportation of supplies or personnel by ship or aircraft to a location, or between locations, where activities in connection with preliminary surveys, exploration or exploitation of the seabed and subsoil and their natural resources are being carried on in the other Contracting State, or from the operation of tugboats and other vessels auxiliary to such activities, shall be taxable only in the first mentioned State.

(4) Gains from the alienation of ships or aircraft operated as referred to in paragraph 3 of this Article, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

(5) (a) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities in the other Contracting State – other than activities as referred to in paragraph 3 of this Article – may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

(b) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of employment aboard a ship or aircraft operated as referred to in paragraph 3 of this Article by an enterprise of a Contracting State, may be taxed in that State.

(6) Gains derived by a resident of a Contracting State from the alienation of:

(a) exploration or exploitation rights; or

(b) property situated in the other Contracting State and used in connection with offshore activities, as defined in paragraph 1 of this Article, carried on in that other State; or

(c) shares deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together,

may be taxed in that other State. In this paragraph "exploration or exploitation rights" means rights to assets to be produced by the exploration or exploitation of the seabed and subsoil and their natural resources in the other Contracting State, including rights to interests in or to the benefit of such assets.

ARTICLE 22

Elimination of double taxation

(1) (a) Subject to the provisions of sub-paragraph b) of this paragraph, where a resident of the Faroes derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, the Faroes shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the United Kingdom.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Kingdom.

(b) Where a resident of the Faroes derives income which, in accordance with the provisions of this Convention shall be taxable only in the United Kingdom, the Faroes may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from the United Kingdom.

(2) 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 (which shall not affect the general principle hereof):

(a) Faroese tax payable under the laws of the Faroes and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Faroes (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 Faroese tax is computed;

(b) in the case of a dividend paid by a company which is a resident of the Faroes 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 shall take into account (in addition to any Faroese tax for which credit may be allowed under the provisions of sub-paragraph a) of this paragraph) the Faroese tax payable by the company in respect of the profits out of which such dividend is paid.

(3) For the purposes of paragraphs 1 and 2 of this Article, profits, income and capital 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.

(4) Notwithstanding the provisions of paragraph 1:

(a) where gains may be taxed by a Contracting State by reason only of paragraph 7 of Article 13, that Contracting State and not the other Contracting State shall eliminate double taxation in accordance with the methods set out in this Article as if the gains arose from sources in the other Contracting State;

(b) where gains may be taxed by a Contracting State by reason of paragraphs 1, 2 or 3 of Article 13, the other Contracting State and not the first-mentioned Contracting State, shall eliminate double taxation in accordance with the methods set out in paragraph 1 or 2 of this Article.

ARTICLE 23

Miscellaneous rules

(1) Where under any provision of this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income or those gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income or gains as is taxed in the other State.

(2) An item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for the purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

ARTICLE 24

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) 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.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 10, paragraphs 4 or 5 of Article 11, paragraphs 4 or 5 of Article 12, or paragraphs 4 or 5 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.

(5) 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.

(6) The provisions of this Article shall apply to taxes which are the subject of this Convention.

ARTICLE 25

Mutual agreement procedure

(1) Where a resident of a Contracting State 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 24, to that of the Contracting State of which he is a national.

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

(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.

ARTICLE 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention, 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.

(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, 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 a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

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. 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 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 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, 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, 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 ensure 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;

(e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

ARTICLE 28

Members of diplomatic missions and consular posts

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

ARTICLE 29

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.

(2) This Convention shall enter into force on the day of the later of these notifications and shall thereupon have effect:

(a) in the Faroes:

for income years beginning on or after 1st January in the calendar year next following the year in which the Convention enters into force;

(b) in the United Kingdom:

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

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

ARTICLE 30

Termination

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

(a) in the Faroes:

for income years beginning on or after 1st January in the calendar year next following the day when the notice of termination is given;

(b) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which the notice is given;

(ii) 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 20th day of June 2007 in the Faroese and English languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:
Dawn Primarolo

For the Government of the Faroes:
Magni Laksáfoss

PART 2

PROTOCOL

TO

CONVENTION BETWEEN THE GOVERNMENT OF THE FAROES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

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 between the Government of the Faroes and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. With reference to paragraph 3 of Article 2

It is understood that the inclusion of the petroleum revenue tax and the supplementary charge in respect of ring fence trades in sub-paragraph (b) is solely for the purpose of permitting the Faroes to give credit for these taxes under Article 22.

2. With reference to paragraph 2 of Article 23

It is understood that where an item of income, profit or gain is derived through a person which is a resident of a Contracting State the provisions of the paragraph shall not prevent that Contracting State from taxing the item as the income, profit or gain of that person.

It is further understood that, where, by virtue of the paragraph, an item of income, profit or gain is considered by a Contracting State to be derived by a person who is a resident of that Contracting State, and the same item is considered by the other Contracting State to be derived by that person or by a person who is a resident of that other Contracting State, neither Contracting State shall be prevented from taxing the item as the income, profit or gain of the person considered by that State to have derived the item of income, profit or gain.

Done in duplicate at London this 20th day of June 2007 in the Faroese and English languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:
Dawn Primarolo

For the Government of the Faroes:
Magni Laksáfoss

EXPLANATORY NOTE

(This note is not part of the Order)

An agreement dealing with the avoidance of double taxation and fiscal evasion between the United Kingdom and the Faroes ("the Agreement") is set out in the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of arrangements set out in the Agreement contained in Part 1 of the Schedule to the Order and in the Protocol contained in Part 2 of that Schedule and that it is expedient that those arrangements should have effect.

A detailed explanation of the Agreement can be found in the Explanatory Memorandum published with the Agreement and which may be accessed on the web site of the Office of Public Sector Information at http://www.opsi.gov.uk/stat.htm

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures.

It will take effect in the United Kingdom—

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 the notice is given; and

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

It will take effect in the Faroes—

in respect of income years beginning on or after 1st January in the calendar year next following the year in which such notice has been given (see Article 29 of the Agreement).

The date of entry into force will, in due course, be published in the *London, Edinburgh* and *Belfast Gazettes*.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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

DRAFT STATUTORY INSTRUMENTS

2007 No.

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Faroes) Order 2007

£4.00

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