Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010, for approval by resolution of that House.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief (Netherlands) Order 2013

Made - - - - ***

At the Court at Buckingham Palace, the *** day of *** 2013

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 approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Netherlands) Order 2013.

Double taxation arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Protocol set out in the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Netherlands) Order 2009(**b**), have been made with the Government of the Kingdom of the Netherlands;

(**a**) 2010 c. 8.
(**b**) S. I. 2009/227.

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

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

Name
Clerk of the Privy Council

SCHEDULE

Article 2

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

The Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Kingdom of the Netherlands,

Desiring to conclude a Protocol to amend the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, with Protocol, signed at London on 26 September 2008 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Article 7 of the Convention shall be deleted and replaced by the following Article:

"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 if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement.

(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 II

Sub-paragraph (b) of paragraph (1) of Article 18 of the Convention shall be deleted and replaced by the following sub-paragraph:

"(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;

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

ARTICLE III

Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for bringing into force this Protocol. This Protocol shall enter into force on the last day of the month following the month in which the later of these notifications has been received and shall thereupon have effect:

(a) 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 Protocol enters into force;

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

(b) in the Netherlands: for taxable years and periods beginning on or after the first day of January next following the date on which this Protocol enters into force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at London this 12th day of June 2013, in duplicate, in the English and Netherlands languages, both texts being equally authoritative.

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

David Gauke

For the Government of the Kingdom of the Netherlands:

Frans Weekers

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol ("the Protocol") which amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains ("the Convention"). The Convention was scheduled to the Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Netherlands) Order 2009 (S.I. 2009/227). This Order brings the Protocol into effect.

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

The Protocol replaces Article 7 (Business Profits) of the Convention to bring it into line with the latest approach of the Organisation for Economic Cooperation and Development (OECD) as set out in its Model Tax Convention on Income and on Capital. Article 18 is amended to ensure the effective taxation of government service income.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Protocol will enter into force on the last day of the month following that in which the later of the notifications by each country of the completion of its legislative procedures is received. It will take effect:

(a) 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 of entry into force;

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

(b) in the Netherlands, for taxable years and periods beginning on or after 1st January next 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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