STATUTORY INSTRUMENTS

2015 No. 2011

TAXES

The Double Taxation Relief and International Tax Enforcement (Canada) Order 2015

Made - - - - 9th December 2015

At the Court at Buckingham Palace, the 9th day of December 2015

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(**1**) and section 173(7) of the Finance Act 2006(**2**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) 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 (Canada) Order 2015.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the agreement specified in the Exchange of Letters set out in the Schedule to this Order ("the Agreement"), which supplements the provision for arbitration set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980(**3**) has been made with the Government of Canada;

(b) the Agreement has been made with a view to prescribing the manner in which arbitration shall be conducted; and

(c) it is expedient that the Agreement should have effect.

(**1**) 2010 c. 8
(**2**) 2006 c. 25.
(**3**) S.I. 1980/709, as amended by S.I. 1980/1528, S.I. 1985/1996, S.I. 2003/2619, and S.I. 2014/3274.

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE Article 2

PART 1

Note 1014/14 dated 27th July 2015 by the High Commissioner of Canada

XNGR No 1014/15

H.E David Gauke,Financial Secretary to the Treasury
Excellency,

I have the honor to refer to the Convention between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance double taxation and the prevention of fiscal evasion with respect to taxes on income and capit gains, signed at London on 8 September 1978, as amended by the protocol signed at Ottawa 15th April 1980, by the protocol signed at London on 16th October 1985, by the protocol signed at London on 7th May 2003 and by the protocol signed at London on 21st July 2014, and to propose on behalf of the Government of Canada the following:

In respect of any case where the competent authorities have endeavored but are unable to rea a complete agreement under Article 23 (Mutual Agreement Procedure) of the Convention a unresolved issues arising from the case shall be submitted to arbitration, in accordance w paragraphs 6 and 7 of Article 23 (Mutual Agreement Procedure) of the Convention unless competent authorities agree that the particular case is not suitable for determination arbitration. If an arbitration proceeding under paragraph 6 of Article 23 (Mutual Agreem Procedure) commences, the following shall apply:

(1) The arbitration proceeding shall be conducted in the manner prescribed by, and subje to the requirements of, paragraphs 6 and 7 of Article 23 (Mutual Agreement Procedure) of the Convention and the rules and procedures of this Note.

(2) The competent authorities of the Contracting States shall agree in writing, before the date that the first arbitration proceeding begins, on procedures, including arbitration board operating guidelines, that are consistent with paragraphs 6 and 7 of Article 23 (Mutual Agreement Procedure) of the Convention and the rules and procedure set out in this Note.

(3) In this Note, the term "concerned person" means the presenter of a case to a compete authority for consideration under paragraph 1 of Article 23 (Mutual Agreement Procedure) of the Convention as well as any person whose tax liability to either Contracting State may be directly affected by a mutual agreement arising from that consideration.

(4) The "commencement date" for a case is the date on which the information necessary undertake substantive consideration for a mutual agreement is received by the competent authorities of both Contracting States.

(5) The competent authority of each Contracting State shall confirm in writing to the oth competent authority and to the presenter of the case the date on which all of the information necessary to undertake substantive consideration for a mutual agreement is received. Howeve this information will not be considered received until both competent authorities receive all

(a) any tax return of any concerned person is not duly filed with at least one of the Contracting States with respect to a taxation year at issue in the case;

(b) a concerned person does not consent to the requirement in paragraph (8);

(c) the case has been appealed in a Contracting State and the appeal is not held in abeyance pending a resolution under Article 23 (Mutual Agreement Procedure of the Convention; or

(d) the case involves primarily the application of domestic anti-abuse provisions.

(7) Arbitration proceedings in a case begin on the later of:

(a) three years after the commencement date of that case, or other date as agreed b the competent authorities of both Contracting States in accordance with paragraph 6 of Article 23 (Mutual Agreement Procedure) of the Convention; a

(b) the date upon which the statement required by paragraph (8) has been received by the competent authorities of both Contracting States.

(8) Each concerned person and their authorized representatives or agents must consent, within 60 days of the date mentioned in paragraph (7)(a) of this Note, not to disclose to any other person (except to other concerned persons) any information received during the course the arbitration proceeding from either Contracting State or the arbitration board, other than th determination of the arbitration board and must sign a written non-disclosure statement. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive written statement.

(9) For the purposes of an arbitration proceeding under paragraph 6 of Article 23 (Mutua Agreement Procedure) of the Convention the members of the arbitration board and their staff are considered "persons or authorities" to whom information may be disclosed under Article (Exchange of Information) of the Convention.

(10) If at any time before the arbitration board delivers a determination to the competent authorities of the Contracting States:

(a) the competent authorities of the Contracting States reach a mutual agreement t resolve the case pursuant to Article 23 (Mutual Agreement Procedure) of the Convention;

(b) the presenter of the case withdraws the application for the competent authoritie to engage in the mutual agreement procedure under Article 23 (Mutual Agreement Procedure) of the Convention;

(c) a decision concerning the case is rendered by a court or administrative tribunal of one of the Contracting States during the arbitration proceeding; or

(d) any concerned person or their authorized representatives or agents wilfully violates the written non-disclosure statement required by paragraph (8) of this

(11) Regarding the selection of the members of the arbitration board:

(a) the competent authority of each Contracting State has 60 days from the date on which the arbitration proceeding begins in accordance with paragraph (7) of th Note to send a written communication to the competent authority of the other Contracting State appointing one member of the arbitration board;

(b) if the competent authority of a Contracting State fails to appoint a member within the time period prescribed by this paragraph, the competent authority of the other Contracting State shall select a second member of the arbitration boa

(c) within 60 days from the date on which the communication appointing the seco member of the arbitration board is sent, the two members appointed by the competent authorities of the Contracting States shall appoint a third member, who will serve as chair of the board;

(d) if the members appointed by the Contracting States fail to agree upon the third member in the manner prescribed by this paragraph, the competent authority o Contracting State shall ask the highest ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic C operation and Development (OECD) who is not a citizen of either Contracting State, to appoint the remaining member(s) who is not a citizen of either Contracting State by written notice to the competent authorities of both Contracting States within 60 days from the date of that failure;

(e) the competent authorities shall develop a list of individuals who are familiar w international tax matters who may serve as the chair of the board;

(f) the members appointed will not have any prior involvement with the specific matters at issue in the arbitration proceeding for which they are being consider as members of the arbitration board.

(12) All communications between the Contracting States and the arbitration board shall be in writing between the designated competent authorities and the chair of the arbitration board (except for logistical matters) and, in particular:

(a) the competent authority of each Contracting State may submit for considerati by the arbitration board, within 60 days from the appointment of the chair of th arbitration board, a proposed resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the ca and, if applicable, the relevant threshold question as described in paragraph (1 of this Note, and a supporting position paper;

(b) the proposed resolution and supporting position paper submitted to the arbitration board by the competent authority of a Contracting State shall be provided to the competent authority of the other Contracting State according to the procedure established by the competent authorities of the Contracting State

(c) in the event that only one of the Contracting States submits a proposed resolution within the allotted time, then that proposed resolution is deemed to