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

2014 No.

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Japan) Order 2014

Made - - - - [day] [Month] 2014

At the Court at Buckingham Palace, the [date] day of [Month] 2014

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 (Japan) Order 2014.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(**1**) 2010 c. 8.
(**2**) 2006 c. 25.

(a) the arrangements specified in the Protocol set out in Part 1 of the Schedule to this Order and in the Exchange of Letters set out in Part 2 of that Schedule, which amend the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Japan) Order 2006(**3**), have been made with the Government of Japan;

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

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

Name
Clerk of the Privy Council

(**3**) S.I. 2006/1924.

SCHEDULE Article 2

PART 1

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

The United Kingdom of Great Britain and Northern Ireland and Japan,

Desiring to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains signed at London on 2 February 2006 (hereinafter referred to as "the Convention") and the Protocol, which forms an integral part of the Convention, signed at London on 2 February 2006 (hereinafter referred to as "the Protocol of 2006"),

Have agreed as follows:

ARTICLE 1

Subparagraph (a) of paragraph 1 of Article 2 of the Convention shall be deleted and replaced by the following:

"(a) in the case of Japan:

(i) the income tax;

(ii) the corporation tax;

(iii) the special income tax for reconstruction;

(iv) the special corporation tax for reconstruction; and

(v) the local inhabitant taxes

(hereinafter referred to as "Japanese tax");"

ARTICLE 2

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

"Article 7

1. Profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 of this Article may be taxed in that other Contracting State.

2. For the purposes of this Article and Article 23 of this Convention, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 of this Article 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 of this Article, 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 Contracting State, the other Contracting State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income, profits or 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 3

1. Paragraph 2 of Article 9 of the Convention shall be deleted and replaced by the following:

> "2. Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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."

2. Paragraph 3 of Article 9 of the Convention shall be amended by deleting the words "seven years" and replacing them with the words "ten years".

ARTICLE 4

1. Paragraph 2 of Article 10 of the Convention shall be deleted and replaced by the following:

> "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 Contracting State, but if the dividends are beneficially owned by a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends."

2. Subparagraph (a) of paragraph 3 of Article 10 of the Convention shall be amended by deleting the words "50 per cent" and replacing them with the words "10 per cent".

3. A new paragraph shall be added after paragraph 3 of Article 10 of the Convention as follows:

"4. The provisions of 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. Paragraph 4 of Article 10 of the Convention shall be amended by deleting the words "subparagraph (a) of paragraph 2 and" and renumbered as paragraph 5.

5. Paragraphs 5, 6, 7, 8 and 9 of Article 10 of the Convention shall be renumbered as paragraphs 6, 7, 8, 9 and 10 respectively.

ARTICLE 5

Article 11 of the Convention shall be deleted and replaced by the following:

"Article 11

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 Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, interest arising in a Contracting State that is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in a Contracting State, may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. 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, and all other income that is subjected to the same taxation treatment as income from money lent by the tax laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. Income dealt with in Article 10 of this Convention shall not be regarded as interest for the purposes of this Convention.

4. The provisions of paragraphs 1 and 2 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 of this Convention shall apply.

5. 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 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.

6. A resident of a Contracting State shall not be considered the beneficial owner of interest in respect of a debt-claim if such debt-claim would not have been established unless a person:

(a) that is not entitled to benefits with respect to the interest arising in the other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and.