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. 0000

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX
PETROLEUM REVENUE TAX

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

Made - - - - ***

At the Court at Buckingham Palace, the *** day of *** 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 exercising the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Canada) Order 2014.

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

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Protocol set out in Part 1 of the Schedule to this Order and in the Interpretative Protocol set out in Part 2 of that Schedule, which further vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) Order 1980(**3**), have been made with the Government of Canada.

(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 petroleum revenue tax and taxes of a similar character imposed by the laws of Canada 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. 1980/709; the arrangements scheduled to that Order were amended by the arrangements set out in the Schedules to S.I. 1980/1528, S.I. 1985/1996, and S.I. 2003/2619.

SCHEDULE Article 2

PART 1

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON 8 SEPTEMBER 1978, AS AMENDED BY THE PROTOCOL SIGNED AT OTTAWA ON 15 APRIL 1980, BY THE PROTOCOL SIGNED AT LONDON ON 16 OCTOBER 1985 AND BY THE PROTOCOL SIGNED AT LONDON ON 7 MAY 2003

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA;

DESIRING to conclude a protocol to amend further the Convention between the Government of Canada 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 capital gains, signed at London on 8th September 1978, as amended by the Protocol signed at Ottawa on 15th April 1980, by the Protocol signed at London on 16th October 1985 and by the Protocol signed at London on 7th May 2003 (hereinafter referred to as the "Convention");

HAVE AGREED as follows:

ARTICLE I

1. Paragraph 1(c) of Article 3 of the Convention shall be deleted and replaced by the following:

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

2. Paragraph 1(f) of Article 3 of the Convention shall be deleted and replaced by the following:

"(f) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or the Minister's authorised representative;

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

3. The following new subparagraph shall be added to paragraph 1 of Article 3:

"(i) 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."

ARTICLE II

Paragraph 1 of Article 4 of the Convention shall be deleted and replaced by the following:

"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 taxation therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. This term also includes that State and any political subdivision or local authority thereof, or any agency or instrumentality of that State, subdivision or local authority. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein."

ARTICLE III

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

"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 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 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 IV

Paragraph 2 of Article 8 of the Convention shall be deleted and replaced by the following:

"2. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived by an enterprise of a Contracting State from the carriage by a ship or aircraft of passengers or goods taken on board at a place in the other Contracting State for discharge at another place in that other Contracting State may be taxed in that other Contracting State, unless all or substantially all of the passengers or goods carried to that other place were taken on board at a place outside that other Contracting State."

ARTICLE V

Paragraphs 3 and 4 of Article 9 of the Convention shall be deleted and replaced by the following:

"3. A Contracting State shall not make a primary adjustment to the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after eight years from the end of the taxable year in which the profits which would be subject to such an adjustment would, but for the conditions referred to in paragraph 1, have been attributed to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or where a person's obligations have not been fulfilled owing to careless or deliberate behaviour."

ARTICLE VI

1. The following paragraphs shall be inserted after paragraph 2 of Article 10 of the Convention:

"3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting State and beneficially owned by an organisation that was constituted and is operated in the other Contracting State exclusively to administer or provide benefits under one or more recognized pension plans shall be exempt from tax in the first-mentioned State if:

(a) the organisation is the beneficial owner of the shares on which the dividends are paid, holds those shares as an investment and is generally exempt from tax in the other State;

(b) the organisation does not own directly or indirectly more than 10 per cent of the capital or 10 per cent of the voting power of the company paying the dividends; and

(c) each recognized pension plan provides benefits primarily to individuals who are resident of the other Contracting State.

4. For the purposes of paragraph 3, the term "recognized pension plan" means:

(a) in the case of Canada, a retirement or employee benefits plan described in paragraph (a) of the definition of "pension" under Article 5 of the Income Tax Conventions Interpretation Act;

(b) in the case of the United Kingdom, a pension scheme (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes; and

(c) any other pension plan agreed by the competent authorities of both Contracting States."

2. Paragraphs 4 to 7 of Article 10 of the Convention shall be renumbered as paragraphs 5 to 8.

ARTICLE VII