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

2013 No. 0000

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX
PETROLEUM REVENUE TAX

The Double Taxation Relief and International Tax Enforcement (India) Order 2013

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 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 (India) Order 2013.

(**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 the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (India) Order 1993(**3**), have been made with the Government of the Republic of India;

(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 the Republic of India 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. 1993/1801.

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 REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

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

Desiring to amend the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed at New Delhi on 25 January 1993 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Sub-paragraph (f) of paragraph 1 of Article 3 shall be deleted and replaced by the following:

"(f) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;"

ARTICLE II

Paragraph 2 of Article 3 shall be deleted. Paragraph 3 shall not be renumbered.

ARTICLE III

Paragraph 1 of Article 4 (Fiscal domicile) 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 tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries."

ARTICLE IV

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

"ARTICLE 11

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) 15 per cent of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(b) 10 per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 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, or performs in that other State independent personal services from a fixed base 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 (Business profits) or Article 15 (Independent personal services), as may be the case, shall apply.

5. 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

6. 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 V

Article 25 (Partnerships) of the Convention shall be deleted and the subsequent articles shall not be renumbered.

ARTICLE VI

Article 28 (Exchange of information) of the Convention shall be deleted and replaced by the following Article: