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

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

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 Convention and Protocol set out in the Schedule to this Order have been made with the Government of the Kingdom of Spain;

(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 the Kingdom of Spain 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

SCHEDULE 1 Article 2

PART 1

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

The United Kingdom of Great Britain and Northern Ireland, and the Kingdom of Spain desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Spain:

(i) the income tax on individuals;

(ii) the corporation tax;

(iii) the income tax on non residents;

(iv) the capital tax; and

(v) local taxes on income and on capital;

(hereinafter referred to as "Spanish Tax");

b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes that have been made in their taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the sea bed, its subsoil and superjacent waters, and their natural resources;

b) the term "United Kingdom" means Great Britain and Northern Ireland, including its inland waters, air space and territorial sea, and any maritime area outside its territorial sea within which, in accordance with international law and on application of its domestic legislation concerning the Continental Shelf, the United Kingdom exercises or may exercise in the future jurisdiction or sovereign rights with respect to the sea bed, its subsoil and superjacent waters, and their natural resources;

c) the terms "a Contracting State" and "the other Contracting State" mean Spain or the United Kingdom as the context requires;

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

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term "enterprise" applies to the carrying on of any business;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) 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;

i) the term "competent authority" means:

(i) in Spain, the Minister of Economy and Finance or his authorised representative;

(ii) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs

or their authorised representative;

j) the term "national" means:

(i) in relation to Spain:

aa) any individual possessing the nationality of Spain;

bb) any legal person, partnership or association deriving its status as such from the laws in force in Spain.

(ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;

k) the term "business" includes the performance of professional services and of other activities of an independent character;

l) the term "pension scheme" means:

(i) in Spain:

any scheme, fund, mutual benefit institution or other entity established in Spain

(aa) which manages the right of its beneficiaries to receive income or capital upon retirement, survivorship, widowhood, orphanhood, or disability; and

(bb) contributions to which are eligible for tax benefits in the form of reductions in the taxable base of personal taxes.

(ii) in the United Kingdom:

any plan, scheme, fund, trust or other arrangement established in the United Kingdom which:

(aa) is generally exempt from income taxation; and

(bb) operates principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

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, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State or capital situated therein. The term "resident of a Contracting State" includes a pension scheme established in that State.