Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.

TAXES

The International Mutual Administrative Assistance in Tax Matters Order 2011

Made - - - - [date] [Month] 2011

At the Court at Buckingham Palace, the [date] day of [Month] 2011

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

Accordingly, Her Majesty, in exercise of the power conferred upon Her by sections 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 International Mutual Administrative Assistance in Tax Matters Order 2011.

Mutual administrative assistance arrangements to have effect

2. It is declared that—

(a) the arrangements relating to international tax enforcement set out in the joint Council of Europe/Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters(**2**), as varied by the arrangements specified in the Protocol set out in the Schedule to this Order, have been made with the other signatories, and

(b) it is expedient that the arrangements should have effect.

(**1**) 2006 c. 25.

(**2**) The Convention was given effect by the International Mutual Administrative Assistance in Tax Matters Order 2007 (S.I. 2007/2126).

Name
Clerk of the Privy Council

SCHEDULE Article 2

PROTOCOL AMENDING THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Protocol,

Considering that the Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (hereinafter "the Convention"), was concluded before agreement was reached on the internationally agreed standard to exchange information in tax matters;

Considering that a new cooperative environment has emerged since the Convention was concluded;

Considering that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefit of the new co-operative environment and at the same time to implement the highest international standards of co-operation in the tax field;

Have agreed as follows:

ARTICLE I

1. The seventh recital of the Preamble to the Convention shall be deleted and replaced by the following:

   "Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;"

2. The following shall be added after the seventh recital of the Preamble to the Convention:

   "Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;"

ARTICLE II

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

"Article 4 – General provision

1. The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.

2. Deleted.

3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7."

ARTICLE III

1. The term "and" in paragraph 1.b of Article 18 of the Convention shall be replaced by the

term ", or".

2. The reference to "Article 19" in paragraph 1.f of Article 18 of the Convention shall be replaced by a reference to "Article 21.2.g".

ARTICLE IV

Article 19 of the Convention shall be deleted.

ARTICLE V

Article 21 of the Convention shall be deleted and replaced by the following:

"Article 21 – Protection of persons and limits to the obligation to provide assistance

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

   a) to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;

   b) to carry out measures which would be contrary to public policy (*ordre public*);

   c) to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;

   d) to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*);

   e) to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

   f) to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;

   g) to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;

   h) to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.

3. If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations