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 Tax Enforcement (Saint Christopher (Saint Kitts) and Nevis) Order 2011

Made - - - - [day] [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 powers conferred upon Her by 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 International Tax Enforcement (Saint Christopher (Saint Kitts) and Nevis) Order 2011.

Tax information exchange arrangements to have effect

2. It is declared that—

(a) the arrangements set out in the agreement in Part 1 of the Schedule to this Order and the Exchange of Notes set out in Part 2 of that Schedule have been made with the Government of Saint Christopher (Saint Kitts) and Nevis with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the arrangements; and

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

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

Name
Clerk of the Privy Council

SCHEDULE Article 2

PART 1

AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND SAINT CHRISTOPHER (SAINT KITTS) AND NEVIS FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Saint Christopher (Saint Kitts) and Nevis,

desiring to facilitate the exchange of information with respect to taxes;

have agreed as follows:

ARTICLE 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2

Jurisdiction

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

Taxes Covered

The taxes which are the subject of this Agreement are all existing taxes imposed or administered by either Contracting Party and any identical or substantially similar taxes imposed after the date of signature of the Agreement. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

a) the term "Contracting Party" means Saint Kitts and Nevis or the United Kingdom as the context requires;

b) the term "the United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;

c) the term "Saint Kitts and Nevis" means the Federation of Saint Christopher and Nevis;

d) the term "competent authority" means

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

ii) in the case of Saint Kitts and Nevis, the Financial Secretary or the Financial Secretary´s authorised representative;

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

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

g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

k) the term "tax" means any tax to which the Agreement applies;

l) the term "applicant Party" means the Contracting Party requesting information;

m) the term "requested Party" means the Contracting Party requested to provide information;

n) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

o) the term "information" means any fact, statement or record in any form whatever;

p) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;

q) the term "criminal laws" means all criminal laws designated as such under domestic law

irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, 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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

a) the identity of the person under examination or investigation;

b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

c) the tax purpose for which the information is sought, including a statement of the law imposing the tax to which the request relates;

d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;