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

2011 No.

TAXES

The Double Taxation Relief and International Tax Enforcement (Montserrat) 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 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 exercise of 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 (Montserrat) Order 2011.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangement set out in Part 1 of the Schedule to this Order and specified in the Exchange of Letters set out in Part 2 of that Schedule, which varies the arrangement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1947(**3**) and amended by the arrangement set out in the Schedule to the Double

(**1**) 2010 c. 8.
(**2**) 2006 c. 25.
(**3**) S.I. 1947/2869 amended by S.I.1968/576

Taxation Relief (Taxes on Income) (Montserrat) Order 1968(**4**), has been made with the Government of Montserrat;

(b) the arrangement has been made with a view to affording relief from double taxation in relation to income tax, corporation tax and taxes of a similar character imposed by the laws of Montserrat and for the purpose of assisting international tax enforcement; and

(c) it is expedient that the arrangement should have effect.

Name
Clerk of the Privy Council

(**4**) S.I. 1968/576

SCHEDULE Article 2

PART 1

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF MONTSERRAT AMENDING THE 1947 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1968 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS

Her Majesty's Government and the Government of Montserrat;

Desiring to improve the operation of the existing Arrangement between the two governments for the avoidance of double taxation;

Have arranged as follows:

1. In this Arrangement the term "the 1947 Arrangement" means the Arrangement made in 1947 between Her Majesty's Government and the Government of Montserrat for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as amended by the 1968 Arrangement between Her Majesty's Government and the Government of Montserrat.

2. After paragraph 2(1) (k) of the 1947 Arrangement there shall be inserted the following:

"(l) 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 Montserrat, the Comptroller of Inland Revenue."

3. Paragraph 10 of the 1947 Arrangement shall be deleted and replaced with the following:

"10. Pensions, annuities and other similar remuneration paid to an individual who is a resident of one of the territories, other than pensions exempt from tax in that territory by virtue of paragraph 8(1) of this Arrangement, shall be taxable only in that territory."

4. Paragraph 14 of the 1947 Arrangement shall be deleted and replaced with the following:

"14.–(1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of the territories concerning taxes of every kind and description imposed on behalf of the territories, insofar as the taxation thereunder is not contrary to this Arrangement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by paragraph 1 of this Arrangement.

(2) Any information received under sub-paragraph 1 of this paragraph by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in sub-paragraph 1, or the

oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorises such use.

(3) In no case shall the provisions of sub-paragraphs 1 and 2 of this paragraph be construed so as to impose on a territory a requirement:

(a) to carry out administrative measures at variance with the laws and administrative practice of that territory or of the other territory;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that territory or of the other territory;

(c) 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.

(4) If information is requested by a territory in accordance with this paragraph, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The requirement in the preceding sentence is subject to the limitations of sub-paragraph 3 of this paragraph but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of sub-paragraph 3 of this paragraph be construed to permit a territory to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

5. After paragraph 14 of the 1947 Arrangement there shall be inserted the following new paragraph:

"14A.–(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The competent authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

(4) The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph."

6. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force