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 (Dominica) 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 (Dominica) Order 2011.

Tax information exchange agreement to have effect

2. It is declared that—

(a) the agreement set out in the Schedule to this Order has been made with the Government of the Commonwealth of Dominica 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 agreement; and

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

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

Name
Clerk of the Privy Council

SCHEDULE Article 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Dominica ("the Contracting Parties") recognise the need for cooperation and the exchange of information in criminal and civil tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and tax matters;

Whereas the Contracting Parties will not, pursuant to Article 5 of the Agreement, engage in fishing expeditions or request information that is unlikely to be relevant to the tax affairs of a given taxpayer;

Now, therefore, the Contracting Parties desiring to conclude an Agreement, which contains obligations on the part of the Contracting Parties only, for the exchange of information with respect to taxes and tax matters, have agreed as follows:

ARTICLE 1

Scope of Agreement

The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and/or enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement. Such information shall include that which 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 criminal 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

1. To enable the provisions of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting Party.

2. A Requested Party is not obliged 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

1. The existing taxes which are the subject of this Agreement are taxes of every kind and

description imposed by or on behalf of the Contracting Parties.

2. This Agreement shall also apply to any identical taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. 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. In this Agreement, unless otherwise defined:

(a) the term "Commonwealth of Dominica" means the island of Dominica, including the territorial waters thereof and any other area in the sea and in the air within which the Commonwealth of Dominica, in accordance with international law, exercises its sovereign rights;

(b) the term "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 "collective investment fund or scheme" means any pooled investment vehicle irrespective of legal form;

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

(e) the term "competent authority" means

(i) in the case of the Commonwealth of Dominica, the Minister for Finance or the Minister's authorised representative;

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

(f) the term "Contracting Party" means the Commonwealth of Dominica or the United Kingdom of Great Britain and Northern Ireland as the context requires;

(g) 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 laws;

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

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

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

(k) the term "national" means:

(i) in the case of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust, estate, association or any other entity deriving its status as such from the laws in force in the Commonwealth of Dominica;

(ii) in the case of 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;

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

(m) 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;

(n) the term "public collective investment fund or scheme" means any collective 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;

(o) 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 restricted to a limited group of investors;

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

(q) the term "Requested Party" means the party to this Agreement which is requested to provide or has provided information in response to a request;

(r) the term "Requesting Party" means the party to this Agreement submitting a request for or having received information from the Requested Party;

(s) the term "tax" means any tax covered by this Agreement.

3. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the Requested Party shall provide upon request in writing by the Requesting Party, 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 it occurred in the territory of 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, the Requested Party shall use all relevant information gathering measures to provide the Requesting 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 the Requesting Party, the