*Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

# 2009 No.

# CAPITAL GAINS TAX
# CORPORATION TAX
# INCOME TAX
# INHERITANCE TAX
# VALUE ADDED TAX

## The Double Taxation Relief and International Tax Enforcement (Virgin Islands) Order 2009

*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 788(10) of the Income and Corporation Taxes Act 1988(**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 788(1) of the Income and Corporation Taxes Act 1988 and section 173(1) 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 (Virgin Islands) Order 2009.

(**1**) 1988 c. 1: Section 788 was extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended. The relevant amendments are as follows: Subsection (1) was amended by section 88(1) of the Finance Act 2002 (c. 23). Subsection (10) was substituted by section 176 of the Finance Act 2006 (c. 25).

(**2**) 2006 c. 25.

**Tax information exchange arrangements to have effect**

**2.** It is declared that—

(a) the arrangements specified in the Exchange of Letters set out in Part 1 of the Schedule to this Order and in the Agreement set out in Part 2 of that Schedule have been made with the Government of the Virgin Islands 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 including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

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

**Double taxation arrangements to have effect**

**3.** It is also declared that—

(a) the arrangements specified in the Exchange of Letters set out in Part 1 of the Schedule to this Order and in the Agreement set out in Part 3 of that Schedule have been made with the Government of the Virgin Islands with a view to affording relief from double taxation in relation to United Kingdom income tax and taxes of a similar character imposed by the laws of either party; and

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

Clerk of the Privy Council

SCHEDULE Article 2

# PART 1

## EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE VIRGIN ISLANDS CONCERNING AGREEMENTS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES AND THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;

- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term "Agreement" in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that that other party may suspend the operation of either, or both, Agreements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

Please accept, Sir, the assurance of our highest consideration,

*Gillian Merron*
Under-Secretary of State, Foreign & Commonwealth Office

For the Government of the United Kingdom
Signed in London on 29th October 2008.

Madam,

I have the honour to acknowledge receipt of your letter dated 29th October 2008, which reads as follows:

"Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;

- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term "Agreement" in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that that other party may suspend the operation of either, or both, Agreements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

Please accept, Sir, the assurance of our highest consideration,"

I am able to confirm that the contents of your letter dated 29th October 2008 and Appendices 1 and 2 thereto are acceptable to the Government of the Virgin Islands and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the said Agreements.