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 (Guernsey) 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 (Guernsey) 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 States of Guernsey 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 Arrangement set out in Part 3 of that Schedule, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1952(**3**), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Guernsey) Order 1994(**4**), have been made with the States of Guernsey with a view to affording relief from double taxation in relation to income tax or corporation 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

(**3**) S.I. 1952/1215
(**4**) S.I. 1994/3209

SCHEDULE Article 2

PART 1

EXCHANGE OF LETTERS BETWEEN THE UNITED KINGDOM AND GUERNSEY CONCERNING A TAX INFORMATION EXCHANGE AGREEMENT AND AN ARRANGEMENT AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Sir

I have the honour to propose to you -

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Guernsey for the exchange of information relating to tax matters ("the Agreement") at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the States of Guernsey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income at Appendix 2 to this letter ("the 1952 Arrangement") and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

In the event that either party to the Agreement at Appendix 1 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 the Agreement for so 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.

The United Kingdom and Guernsey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Guernsey has taken in recent years to comply with these international standards and is also pleased to note that Guernsey will shortly be reviewed by the IMF to assess compliance with the current international standards.

The United Kingdom will use its best endeavours to ensure that where EU Directives or Regulations include provisions referring to the position of third countries, Guernsey is treated as fairly as other third countries or territories.

The United Kingdom recognises that Guernsey is committed to international cooperation and information exchange on tax matters, and recognises the States of Guernsey's commitment to a "good neighbour" policy.

I have the honour to propose that, if the above is acceptable to the States of Guernsey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.

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

Lord Bach
Parliamentary Under Secretary of State for Justice

Sir,

I have the honour to acknowledge receipt of your letter of 20th January 2009, which reads as follows:

"Sir

I have the honour to propose to you -

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Guernsey for the exchange of information relating to tax matters ("the Agreement") at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the States of Guernsey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("the 1952 Arrangement") at Appendix 2 to this letter and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

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The United Kingdom and Guernsey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Guernsey has taken in recent years to comply with these international standards and is also pleased to note that Guernsey will shortly be reviewed by the IMF to assess compliance with the current international standards.

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I have the honour to propose that, if the above is acceptable to the States of Guernsey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.