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.

TAXES

The Double Taxation Relief and International Tax Enforcement (Libya) 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 (Libya) Order 2009.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Convention scheduled to this Order have been made with the Government of the Great Socialist People's Libyan Arab Jamahiriya;

(b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar

(**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 relevantly amended 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.

character imposed by the laws of Libya and for the purpose of assisting international tax enforcement; and

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

Name
Clerk of the Privy Council

SCHEDULE Article 2

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The United Kingdom of Great Britain and Northern Ireland and the Great Socialist People's Libyan Arab Jamahiriya;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

Have agreed as follows:

ARTICLE 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which this Convention shall apply are in particular:

(a) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax");

(b) in the Great Socialist People's Libyan Arab Jamahiriya:

(i) the income tax, Law No(11) of 1372 P.D (2004) regarding income tax;

(ii) the additional income tax for the Libyan Society of Islamic Call (Law No(44) of 1970)

(hereinafter referred to as "Libyan tax").

4. This Convention shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) 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 subsoil and their natural resources may be exercised;

(b) the term "the Great Socialist People's Libyan Arab Jamahiriya" means the territory of the Great Socialist People's Libyan Arab Jamahiriya, including the airspace, territorial waters, and any area outside the territorial waters, in which the Great Socialist People's Libyan Arab Jamahiriya has, according to the international law, rights of sovereignty for purposes of exploration and exploitation of the natural resources of the seabed and its subsoil as well as its waters above it;

(c) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or the Great Socialist People's Libyan Arab Jamahiriya, as the context requires;

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

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

(f) the term "enterprise" applies to the carrying on of any business;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) 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 representatives;

(ii) in the case of the Great Socialist People's Libyan Arab Jamahiriya, the Secretariat of the General People's Committee of Finance and the head of the tax department or their authorised representatives;

(j) the term "national" means:

(i) in relation to 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;

(ii) in relation to the Great Socialist People's Libyan Arab Jamahiriya, any individual possessing the nationality of the Great Socialist People's Libyan Arab Jamahiriya, and any legal person deriving its status as such from the laws in force in the Great Socialist People's Libyan Arab Jamahiriya;

(k) the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:

(i) generally exempt from income taxation in that State; and

(ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements;

(l) the term "property investment company" means a widely held investment vehicle that distributes most of its income from immovable property within the meaning of Article 7 on which it is exempt from tax;

(m) the term "qualifying dividend" means a distribution as referred to in sub-paragraph l).

2. As regards the application of this Convention at any time by a Contracting State, 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 State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.