Draft Order 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

2008 No.

TAXES

The International Tax Enforcement (Bermuda) Order 2008

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 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) 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 (Bermuda) Order 2008.

Tax information exchange arrangements to have effect

2. —(1) 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 Arrangement set out in Part 2 of that Schedule have been made with the Government of Bermuda 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; and

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

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

Clerk of the Privy Council

SCHEDULE Article 2

PART 1

EXCHANGE OF LETTERS BETWEEN THE UNITED KINGDOM AND BERMUDA CONCERNING A TAX INFORMATION EXCHANGE ARRANGEMENT

Letter from the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office

Madam,

Having regard to the wish of our respective governments to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Bermuda, I have the honour

- to propose to you the provisions contained in the Arrangement set out in the Appendix to this letter;
- to propose that the said provisions may come into force on the date mentioned in Paragraph 12 of the Arrangement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into force of the Arrangement and to notify each other without delay when such formalities are completed.

The Government of the United Kingdom welcomes the conclusion of this Arrangement with the Government of Bermuda, which represents an important step in delivering the commitment it made to the OECD in 2000 to respect the principles of transparency and exchange of information. The Government of the United Kingdom considers that this Arrangement demonstrates Bermuda's commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters within an acceptable timeline, consistent with the aims and objectives of the OECD Global Forum on Taxation.

The Government of the United Kingdom also recognises the important progress that Bermuda has made in negotiation of TIEAs with other countries and recognises that Bermuda is committed to combating tax abuse by putting in place mechanisms which enhance transparency.

In the event that a Territory applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Territory, it is understood that that other Territory may suspend the operation of this Arrangement 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 Territory to residents or nationals of either Territory on the basis that the other Territory 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 Territory against, amongst others, members of the OECD generally.

In the light of the experience of operating the Arrangement, or to reflect changing circumstances, either Government may wish to propose a variation in the terms of this Arrangement. If so, it is understood the other Government will agree to hold timely discussions with a view to revising the terms of the Arrangement to enhance its effectiveness.

I have the honour to confirm that, if the above is acceptable to your Government, this letter together with its Appendix and your confirmation will together constitute our mutual acceptance of the provisions of the Arrangement.

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

Meg Munn MP,
Parliamentary Under-Secretary of State, Foreign and Commonwealth Office
For the Government of the United Kingdom
Signed in London on 4th December 2007

Reply by the Deputy Premier and Minister of Finance of Bermuda

Madam,

I have the honour to acknowledge receipt of your letter dated 4th December 2007, which reads as follows:

"Madam,

Having regard to the wish of our respective governments to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Bermuda, I have the honour

- to propose to you the provisions contained in the Arrangement set out in the Appendix to this letter;
- to propose that the said provisions may come into force on the date mentioned in Paragraph 12 of the Arrangement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into force of the Arrangement and to notify each other without delay when such formalities are completed.

The Government of the United Kingdom welcomes the conclusion of this Arrangement with the Government of Bermuda, which represents an important step in delivering the commitment it made to the OECD in 2000 to respect the principles of transparency and exchange of information. The Government of the United Kingdom considers that this Arrangement demonstrates Bermuda's commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters within an acceptable timeline, consistent with the aims and objectives of the OECD Global Forum on Taxation.

The Government of the United Kingdom also recognises the important progress that Bermuda has made in negotiation of TIEAs with other countries and recognises that Bermuda is committed to combating tax abuse by putting in place mechanisms which enhance transparency.

In the event that a Territory applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Territory, it is understood that that other Territory may suspend the operation of this Arrangement 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 Territory to residents or nationals of either Territory on the basis that the other Territory 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 Territory against, amongst others, members of the OECD generally.

In the light of the experience of operating the Arrangement, or to reflect changing circumstances, either Government may wish to propose a variation in the terms of this Arrangement. If so, it is understood the other Government will agree to hold timely discussions with a view to revising the terms of the Arrangement to enhance its effectiveness.

I have the honour to confirm that, if the above is acceptable to your Government, this letter together with its Appendix and your confirmation will together constitute our mutual acceptance of the provisions of the Arrangement.

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

I am able to confirm that the contents of your letter dated 4th December 2007 are acceptable to the Government of Bermuda, and therefore that this letter together with your letter and its Appendix constitutes our mutual acceptance of the provisions of the Tax Information Exchange Arrangement between Bermuda and the United Kingdom of Great Britain and Northern Ireland.

Please accept, Madam, the assurance of my highest consideration.

The Honourable Paula A Cox, JP, MP
Deputy Premier
Minister of Finance
For the Government of Bermuda
Signed in London on 4th December 2007.

PART 2

ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF BERMUDA ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Bermuda,

Desiring to facilitate the exchange of information with respect to taxes,

Have arranged as follows: