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

2008 No.

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Moldova) Order 2008

Made - - - - 2008

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 (Taxes on Income and Capital) (Moldova) Order 2008.

Double taxation arrangements to have effect

2. It is declared that—

(**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.

(a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order and in the Protocol set out in Part 2 of that Schedule have been made with the Government of the Republic of Moldova with a view to affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character imposed by the laws of the Republic of Moldova;

(b) those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration, 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

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

Clerk of the Privy Council

SCHEDULE Article 2

PART 1

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Moldova;

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;

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 imposed on behalf of a Contracting State or of its administrative-territorial units, 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 all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes to which the Convention shall apply are in particular:

(a) in Moldova:

(i) the income tax, and

(ii) the tax on immovable property;

(hereinafter referred to as "Moldovan tax");

(b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax, and

(iii) the capital gains tax;

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

(4) The 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 terms "a Contracting State" and "the other Contracting State" mean the Republic of Moldova or the United Kingdom of Great Britain and Northern Ireland, as the context requires;

(b) the term "Moldova" means the Republic of Moldova and, when used in a geographical sense, means its territory within its borders, consisting of soil, sub-soil, waters and aerial space above soil and waters, over which the Republic of Moldova exercises its absolute and exclusive sovereignty and jurisdiction, in accordance with its internal legislation and international law;

(c) 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 sea bed and sub-soil and their natural resources may be exercised;

(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 Moldova, the Minister of Finance or his authorised representative;

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

(j) the term "national" means:

(i) in relation to Moldova, any individual possessing the nationality of Moldova; and any legal person, partnership or association deriving its status as such from the laws in force in Moldova;

(ii) 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;

(k) the term "business" includes the performance of professional services and of other activities of an independent character;

(l) 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.

(2) As regards the application of the 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 the 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 registration, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any administrative-territorial unit, 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 or capital situated therein.

(2) The term "resident of a Contracting State" includes:

(a) a pension scheme established in that State; and

(b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

(3) 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 does not have 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.

(4) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention, except those provided by Article 22, Article 24 and Article 25.

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;