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) (France) 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 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) (France) 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 French Republic 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 French Republic;

(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.

Name
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 FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

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

Desiring to conclude a new 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

Personal scope

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

ARTICLE 2

Taxes covered

(1) The taxes which are the subject of this Convention are:

(a) in the case of 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 case of France, all taxes imposed on behalf of the State or of its local authorities irrespective of the manner in which they are levied on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation; those taxes are in particular:

(i) the income tax (l'impôt sur le revenu);

(ii) the corporation tax (l'impôt sur les sociétés);

(iii) the social contribution on corporation tax (la contribution sociale sur l'impôt sur les sociétés);

(iv) the tax on salaries (la taxe sur les salaires);

(v) the "contributions sociales généralisées";

(vi) the "contributions pour le remboursement de la dette sociale";

(hereinafter referred to as "French tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective 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 and any area beyond the territorial sea over which the United Kingdom may exercise its sovereign rights in accordance with international law;

(b) the term "France" means the European and overseas departments of the French Republic including the territorial sea, and any area beyond the territorial sea over which the French Republic has sovereign rights and exercises its jurisdiction in accordance with international law;

(c) 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;

(ii) in relation to France, any individual possessing French nationality;

(d) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or France, as the context requires;

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

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

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

(h) 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;

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

(j) the term "competent authority" means, in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative, and, in the case of France, the Minister of Finance or his authorised representative;

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

(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

Residence

(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 management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof, and any statutory body of that State, subdivision or authority. This term 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 in accordance with the following rules:

(a) he shall be deemed to be a resident only of the Contracting 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 Contracting 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 Contracting 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 Contracting States or of neither of them, the competent authorities of the 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.

(4) The term "resident of a contracting State" shall include where that Contracting State is France any partnership, group of persons or any other similar entity:

(a) which has its place of effective management in France;

(b) which is subject to tax in France; and

(c) all of whose shareholders, associates or members are, pursuant to the tax laws of France, personally liable to tax therein in respect of their share of the profits of that partnership, group of persons or other similar entity.

(5) For the purposes of applying this Convention:

(a) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, group of persons or other similar entity that is established in the other Contracting State; and

(ii) treated as the income of beneficiaries, members or participants of that partnership, group of persons or other similar entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that partnership, group of persons or other similar entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned State;

(b) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, group of persons or other similar entity that is established in the other Contracting State; and

(ii) treated as the income of that partnership, group of persons or other similar entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted to a resident of that other Contracting State, without regard to whether the income is treated as the income of that partnership, group of persons or other similar entity under the tax laws of the first-mentioned State, if such partnership, group of persons or other similar entity is a resident of that other Contracting State and satisfies any other conditions specified in the Convention;

(c) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, group of persons or any other similar entity that is established in that Contracting State;

(ii) treated as the income of beneficiaries, members or participants of that partnership, group of persons or other similar entity under the tax laws of the other Contracting State; and