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

2007 No.

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Double Taxation Relief (Taxes on Income) (Switzerland) Order 2007

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 the 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 (Taxes on Income) (Switzerland) Order 2007.

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) has been amended by section 88(1) of the Finance Act 2002 (c. 23). Subsection (10) has been substituted by section 176 of the Finance Act 2006 (c. 25).

(**2**) 2006 c.25.

(a) the arrangements specified in the Protocol set out in Part I of the Schedule to this Order and in the Exchange of Notes set out in Part II of that Schedule which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1978(**3**) have been made with the Swiss Federal Council 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 Switzerland;

(b) that those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of Switzerland concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

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

Name
Clerk of the Privy Council

(**3**) S.I. 1978/1408, amended by S.I. 1982/714 and 1994/3215

SCHEDULE

PART I

PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 8 DECEMBER 1977, AS AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 5 MARCH 1981 AND BY THE PROTOCOL SIGNED AT BERN ON 17 DECEMBER 1993

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

and

the Swiss Federal Council;

Desiring to conclude a Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 8 December 1977, as amended by the Protocol signed at London on 5 March 1981 and by the Protocol signed at Bern on 17 December 1993 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

A new sub-paragraph (l) of paragraph 1 shall be added to Article 3 (General definitions) of the Convention:

> "(l) the term 'conduit arrangement' means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of this Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a convention for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Convention to a resident of a Contracting State and the main purpose of such structuring is obtaining benefits under this Convention."

ARTICLE II

Paragraph 3 of Article 4 (Residence) of the Convention shall be deleted and replaced by a new paragraph as follows:

> "(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 of the State in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State in which the person's place of effective management is exercised, and in doing so shall take into account all relevant factors. In the absence of such agreement, that person shall not be entitled to claim any benefits provided by this Convention except those provided by paragraph 1 of Article 22 (Elimination of double taxation), Article 23 (Non-discrimination) and Article 24 (Mutual agreement procedure)."

ARTICLE III

A. Paragraphs 1 to 3 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

"(1). Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2). However, such dividends:

(a) shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

(i) a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the capital in the company paying the dividends; or

(ii) a pension scheme;

(b) except as provided in sub-paragraph (a), may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations."

B. Paragraphs 4 to 6 of Article 10 (Dividends) of the Convention shall be renumbered to be paragraphs 3 to 5 of the said Article.

C. The reference to paragraph 3 in the renumbered paragraph 4 (formerly paragraph 5) shall be deleted.

D. A new paragraph 6 shall be added to Article 10 (Dividends) of the Convention:

"(6). The provisions of this Article shall not apply in respect of any dividend paid under, or as part of, a conduit arrangement."

ARTICLE IV

A new paragraph 7 shall be added to Article 11 (Interest) of the Convention:

"(7). The provisions of this Article shall not apply in respect of any interest paid under, or as part of, a conduit arrangement."

ARTICLE V

A. Paragraph 2 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following:

"(2). The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience."

B. A new paragraph 5 shall be added to Article 12 (Royalties) of the Convention:

"(5). The provisions of this Article shall not apply in respect of any royalty paid under, or as part of, a conduit arrangement."

ARTICLE VI

A new paragraph 6 shall be added to Article 13 (Capital Gains) of the Convention:

"(6). The provisions of paragraph 5 shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal

years, a resident of the United Kingdom or on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated."

ARTICLE VII

Sub-paragraph (a) of paragraph 2 of Article 15 (Dependent personal services) shall be deleted and replaced by the following:

"(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that State, and".

ARTICLE VIII

Article 18 (Pensions and annuities) of the Convention shall be deleted and replaced by the following:

"ARTICLE 18

Pensions

(1) Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to an individual who is a resident of a Contracting State, shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, a lump sum payment derived from a pension scheme established in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in the first-mentioned State.

(3) Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State ('the host state') to a pension scheme that is recognised for tax purposes in the other Contracting State ('the home state') shall, for the purposes of:

(a) determining the individual's tax payable in the host state; and

(b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

(4) Paragraph 3 applies only if the following conditions are met:

(a) the individual is subject to the legislation of the home state in accordance with the Agreement on the Free Movement of Persons signed on 21 June 1999, between the Swiss Confederation on one side and the European Community and its Member States on the other side; and

(b) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and

(c) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

(5) For the purposes of paragraphs 2, 3 and 4:

(a) the term 'a pension scheme' means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the employment or self-employment referred to in paragraph 3;

(b) a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if payments made to the scheme by the individual's employer are not deemed in that State to be taxable income of the individual."