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 and International Tax Enforcement (Taxes on Income and Capital) (Faroes) 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 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) (Faroes) 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). Section 788(10) was also amended by section 176 of the Finance Act 2006 (c.25). Section 788(1) was amended by section 88(1) of the Finance Act 2002 (c.23).

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

(a) the arrangements specified in the Agreement 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 Faroes 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 Faroes;

(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;

(c) those arrangements also include provisions with respect to the assistance in the collection of taxes; and

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

Name
Clerk of the Privy Council

SCHEDULE

PART 1

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

Considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of the Faroes, the Government of the Faroes and the Government of the United Kingdom of Great Britain and Northern Ireland;

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, as well as taxes on capital appreciation.

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

(a) in the Faroes:

(i) the national tax on income (landsskattur);

(ii) the municipal tax on income (kommunuskattur);

(iii) the tax on capital gains (kapitalvinningsskattur);

(iv) the tax on royalty (skattur av nýtslugjaldi); and

(v) the tax on revenue relating to hydrocarbon activities (skattur eftir kolvetnisskattalógini);

(hereinafter referred to as "Faroese tax")

(b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(iv) the petroleum revenue tax; and

(v) the supplementary charge in respect of ring fence trades;

(hereinafter referred to as "United Kingdom 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 "Faroes" means the landmass of the Faroes and its territorial waters and any area outside the territorial waters where the Faroes according to Faroese legislation and in accordance with international law, may exercise its rights with respect to the seabed and subsoil and their natural resources;

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

(c) the term "national" means:

(i) in relation to the Faroes, any individual possessing the nationality of Denmark and who is resident in the Faroes and any legal person, partnership or association deriving its status as such from the law in force in the Faroes;

(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;

(d) the term "tax" means Faroese tax or United Kingdom tax, as the context requires;

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

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

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

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

(i) 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;

(j) 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;

(k) the term "competent authority" means:

(i) in the case of the Faroes, the Minister of Finance or his authorised representative;

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

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

(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 purpose 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 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. 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) The term "resident of a Contracting State" includes

(a) a person established in a Contracting State under the laws of that State who is generally exempt from income taxation in that State and who operates, administers or provides pension or retirement benefits or earns income for the benefit of one or more arrangements providing pension or retirement benefits; 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 of this Article 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 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 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 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 Contracting States shall settle the question by mutual agreement.

(4) Where by reason of the provisions of paragraph 1 of this Article 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