Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988, for an Address to Her Majesty from that House praying that an Order be made

DRAFT STATUTORY INSTRUMENTS

2006 No.

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Double Taxation Relief (Taxes on Income) (Japan) Order 2006

Made - - - - **

At the Court at Buckingham Palace, the * day of June 2006

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 an Address has been presented to Her Majesty by that House praying that an Order be made in terms of that draft:

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other relevant enabling powers, is pleased, by and with the advice of Her Privy Council, to order as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Japan) Order 2006.

Double taxation arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order, in the Protocol set out in Part 2 of that Schedule and in the Exchange of Notes constituting an Agreement set out in Part 3 of that Schedule, have been made with Japan with a view to

(**1**) 1988 c. 1. Section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended: the relevant amendment is that made by section 198(1) and (2) of the Finance Act 2003 (c.14).

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 Japan;

(b) 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 Japan concerning 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 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The United Kingdom of Great Britain and Northern Ireland and Japan,

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

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

ARTICLE 2

1. This Convention shall apply to the following taxes:
   (a) in the case of Japan:
      (i) the income tax;
      (ii) the corporation tax; and
      (iii) the local inhabitant taxes

(hereinafter referred to as "Japanese tax");

   (b) in the case of the United Kingdom:
      (i) the income tax;
      (ii) the corporation tax; and
      (iii) the capital gains tax

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

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, those referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective tax laws, or changes in other laws that significantly affect their obligations under the Convention, within a reasonable period of time after such changes.

ARTICLE 3

1. For the purposes of this Convention, unless the context otherwise requires:
   (a) 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 seabed and subsoil and their natural resources may be exercised;
   (b) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which

Japan may exercise sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;

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

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

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

(f) the term "company" means any body corporate or any entity that 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 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;

(j) the term "national" of a Contracting State means:

(i) in the case of 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; and

(ii) in the case of Japan, any individual possessing the nationality of Japan and any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan;

(k) the term "competent authority" means:

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

(ii) in the case of Japan, the Minister of Finance or his authorised representative;

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

(m) the term "pension fund or pension scheme" means any plan, scheme, fund, trust or other arrangement that is:

(i) established under the laws of a Contracting State;

(ii) operated principally to administer or provide pensions, retirement benefits or other similar remuneration or to earn income or gains for the benefit of one or more such arrangements; and

(iii) exempt from tax in that Contracting State with respect to income or gains derived from activities described in clause (ii) of this subparagraph.

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 which it has at that time under the laws of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

ARTICLE 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management, place of incorporation or any other criterion of a similar nature, and also includes:

(a) the Government of that Contracting State and any political subdivision or local authority thereof;

(b) a pension fund or pension scheme established under the laws of that Contracting State; and

(c) an organisation established under the laws of that Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, cultural or public purpose (or for more than one of those purposes), only if all or part of its income or gains may be exempt from tax under the domestic laws of that Contracting State.

This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income, profits or gains from sources in that Contracting State.

2. 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 Contracting States, he shall be deemed to be a resident only of the Contracting 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 Contracting State, he shall be deemed to be a resident only of the Contracting 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 Contracting 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.

3. 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 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 paragraph 1 of Article 23, Article 24 and Article 25 of the Convention.

4. Where, pursuant to any provision of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, income, profits or gains of a resident of the other Contracting State and under the laws in force in that other Contracting State the resident is subject to tax by that other Contracting State only on that part of such income, profits or gains which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income, profits or gains as is remitted to or received in that other Contracting State.

5. For the purposes of applying this Convention:

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

(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and

(ii) treated as an item of income, profit or gain of the beneficiaries, members or participants of that 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 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 an item of income, profit or gain is treated as an item of income, profit or gain of such beneficiaries, members or participants under the tax laws of the first-mentioned Contracting State.

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

(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and

(ii) treated as an item of income, profit or gain of that 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 an item of income, profit or gain is treated as an item of income, profit or gain of the entity under the tax laws of the first-