Draft Order laid before the House of Commons under section 815C(3) of the Income and Corporation Taxes Act 1988, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2006 No.

INCOME TAX

The Tax Information Exchange Agreement (Taxes on Income) (Gibraltar) Order 2006

Made - - - - ****

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

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 815C(3) of the Income and Corporation Taxes Act 1988(**1**) a draft of this Order was laid before the House of Commons and approved by a Resolution of that House.

Accordingly Her Majesty, in exercise of the power conferred upon Her by section 815C of the Act of 1988, 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 Tax Information Exchange Agreement (Taxes on Income) (Gibraltar) Order 2006.

Declaration about exchange of information

2.—(1) It is declared that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Gibraltar with a view to the exchange of information foreseeably relevant to the administration or enforcement of—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax; and

(b) the laws of Gibraltar concerning taxes imposed by Gibraltar which are of a similar character to any of those taxes.

(**1**) 1988 c. 1. Section 815C was inserted by section 146(1) of the Finance Act 2000 (c. 17) and amended by section 88(2) of the Finance Act 2002 (c. 23) and section 198 of the Finance Act 2003 (c. 14).

(2) It is further declared that it is expedient that the arrangements referred to in paragraph (1) should have effect.

Name
Clerk of the Privy Council

SCHEDULE 1 Article 2

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN GIBRALTAR AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

WHEREAS:

1. Article 17 of Directive 2003/48/EC ("The Directive") of the Council of the European Union ("The Council") on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive which provisions shall be, subject to certain provisos, applied from 1 July 2005.

2. The Treaty Establishing the European Community ("TEC") applies to Gibraltar by virtue of Article 299(4) of that Treaty but provisions relating to the Community Customs Territory, free movement of goods, Common Commercial Policy, Common Agricultural and Fisheries Policies and harmonization of turnover taxes do not apply to Gibraltar.

3. The Directive applies to Gibraltar as it is made pursuant to a part of the TEC which applies to Gibraltar. Gibraltar has duly complied with the requirements of the Directive by the enactment and subsequent commencement of the Taxation (Savings Income) Ordinance, as amended ("the Ordinance") which transposes into the laws of Gibraltar the Directive.

4. In common with other cross border measures adopted under the TEC, the Directive does not apply as between Gibraltar and the United Kingdom because Gibraltar and the United Kingdom are not separate Member States in relation to each other.

5. Where such a cross border measure does not apply as between the United Kingdom and Gibraltar, it is the view of both the United Kingdom and Gibraltar that due consideration needs to be given between them to the wider consequences of that limitation in application, including consideration of any material advantage or disadvantage in relation to each other compared to other EU Member States, and that, where appropriate, they should use their best endeavours to agree bilateral arrangements to address such wider consequences.

6. After such consideration in the case of Directive 2003/48/EC, it is the view of both the United Kingdom and Gibraltar that it is inappropriate that no arrangements exist, between the United Kingdom and Gibraltar, similar or equivalent to those provided for in the Directive.

7. **Gibraltar** notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

8. All references in this agreement to United Kingdom are references to the United Kingdom of Great Britain and Northern Ireland. Gibraltar and the United Kingdom, hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires, have accordingly, having regard to the constitutional relationship between the United Kingdom and Gibraltar, agreed to conclude the following Agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the automatic exchange of information by the competent authority of the **United Kingdom** to the competent authority of **Gibraltar** in the same manner as to the competent authority of a Member State;

(b) the application by **Gibraltar**, during the transitional period defined in Article 10 of the Directive, of a withholding tax on the same terms (except as to commencement date) as are contained in Articles 11 and 12 of the Directive;

(c) the automatic exchange of information by the competent authority of **Gibraltar** to the competent authority of the **United Kingdom** in the same manner as that specified under Article 13 of the Directive;

(d) the transfer by the competent authority of **Gibraltar** to the competent authority of the **United Kingdom** of 75% of the revenue from the withholding tax

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term 'competent authority' when applied to the **contracting parties** means Her Majesty's Revenue and Customs **in respect to the United Kingdom** and the Chief Secretary **in respect to Gibraltar**.

ARTICLE 1

Withholding of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in **Gibraltar** to beneficial owners within the meaning of Article 5 of this Agreement who are residents of **the United Kingdom** shall, subject to Article 3 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement. During the transitional period, the rate of withholding tax shall be 15% until 30 June 2008, 20% for the subsequent three years and 35% thereafter.

ARTICLE 2

Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 8 of this Agreement, are made by a paying agent established in the **United Kingdom** to beneficial owners, as defined in Article 5 of this Agreement, who are residents of **Gibraltar**, or where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority:

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund

and **the United Kingdom** will comply with paragraph (2) of this Article.

(2) Within six months following the end of the tax year established by the laws of the United Kingdom, the competent authority of **the United Kingdom** shall communicate to the competent authority of **Gibraltar**, automatically, the information referred to in paragraph (1) (a) – (d) of this Article, for all interest payments made during that year.

ARTICLE 3

Exceptions to the Withholding Tax Procedure

(1) **Gibraltar** when levying a withholding tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the withholding tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of Gibraltar. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the United Kingdom in accordance with paragraph (2) of this Article.

(2) At the request of the beneficial owner, the competent authority of the United Kingdom shall issue a certificate indicating:

(i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(ii) the name and address of the paying agent;

(iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of **Gibraltar** shall communicate the information referred to in Article 2(1) of this Agreement to the competent authority of **the United Kingdom** as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of Gibraltar for all interest payments made during that year.

ARTICLE 4

Basis of assessment for withholding tax

(1) A paying agent established in **Gibraltar** shall levy withholding tax in accordance with Article 1 of this Agreement as follows:-

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;

(d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

(e) where **Gibraltar** exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of withholding tax by **Gibraltar** shall not preclude the United Kingdom as the country of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, **Gibraltar** may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement established in the United Kingdom shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.