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

2005 No.

INCOME TAX

The Tax Information Exchange Agreement (Taxes on Income) (Aruba) Order 2005

Made - - - - 2005

At the Court at Buckingham Palace, the ** day of ** 2005

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, and approved by a resolution of, the House of Commons; Accordingly Her Majesty, in exercise of the power conferred upon Her by section 815C of the Act of 1988, and of all other powers enabling Her in that behalf, 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) (Aruba) Order 2005.

Declaration about exchange of information

2.—(1) It is declared that the arrangements specified in the Convention set out in Part I of the Schedule to this Order, and the Exchange of Notes constituting an Agreement set out in Part II of that Schedule, have been made with the Government of the Kingdom of the Netherlands in respect of Aruba 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 or corporation tax; and

(b) the laws of Aruba concerning taxes imposed by the law of the Aruba 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.

Clerk of the Privy Council

SCHEDULE PART I

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS IN RESPECT OF ARUBA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION ABOUT SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

The Government of the Kingdom of the Netherlands in respect of Aruba and the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a Convention which enables savings income in the form of interest payments made in one of the Contracting States to beneficial owners who are individuals resident in the other Contracting State, to be made subject to effective taxation in accordance with the laws of the latter Contracting State, in conformity with Directive 2003/48/EC of the Council of the European Union of 3 June 2003(**2**) on taxation of savings income in the form of interest payments, have agreed as follows:

ARTICLE 1

General Scope

(1) This Convention shall apply to interest paid by a paying agent established within the territory of one of the Contracting States with a view to enable savings income in the form of interest payments made in one Contracting State to beneficial owners who are individuals resident for tax purposes in the other Contracting State to be made subject to effective taxation in accordance with the laws of the latter Contracting State.

(2) The scope of this Convention shall be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, inter alia, of the issues relating to the taxation of pension and insurance benefits.

(3) As regards the Kingdom of the Netherlands, this Agreement shall apply only to Aruba.

ARTICLE 2

Definitions

(1) For the purposes of this Convention, unless the context otherwise requires:

(a) the term "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands in respect of Aruba or the United Kingdom of Great Britain and Northern Ireland as the context requires;

(b) the term "Aruba" means: that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Aruba;

(c) the "contracting party" being a Member State of the European Union means: the United Kingdom of Great Britain and Northern Ireland;

(d) the term "Directive" means Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;

(e) the term "beneficial owner" means the beneficial owner according to Article 2 of the Directive;

(f) the term "paying agent" means the paying agent according to Article 4 of the Directive;

(g) the term "competent authority" means:

(i) in the case of Aruba: "The Minister of Finance or his authorised representative".

(**2**) OJNo. L157, 26.06.2003, p. 38.

(ii) in the case of the United Kingdom of Great Britain and Northern Ireland: the competent authority of that State according to Article 5 of the Directive;

(h) the term "interest payment" means the interest payment according to article 6, due account being taken of Article 15, of the Directive;

(i) any term not otherwise defined herein shall have the meaning given to it in the Directive.

(2) For the purposes of this Convention, in the provisions of the Directive to which this Convention refers, instead of "Member States" has to be read: Contracting States.

ARTICLE 3

Identity and residence of beneficial owners

Each Contracting State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purpose of Article 4. These procedures shall comply with the minimum standards established in Article 3, paragraph 2 and 3 of the Directive, with the provision that in regard to Aruba, in relation to subparagraphs 2.a) and 3.a) of that Article, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of Aruban law and regulations.

ARTICLE 4

Automatic exchange of information

(1) The competent authority of the Contracting State where the paying agent is established, shall communicate the information referred to in Article 8 of the Directive to the competent authority of the other Contracting State of residence of the beneficial owner.

(2) The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting State of the paying agent, for all interest payments made during that year.

(3) Information exchange under this Convention shall be treated by the Contracting States in a manner consistent with the provisions as set out in Article 7 of Directive 77/799/EEC.

ARTICLE 5

Transposition

Before 1 January 2005 the Contracting States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

ARTICLE 6

Annex

The texts of the Directive(**3**) and of Article 7 of Directive 77/799/EEC of the Council of the European Union of 19 December, 1977(**4**) concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as applicable at the date of signing this Convention and to which this Convention refers, are appended as an Annex to, and form an integral part of, this Convention. The text of Article 7 of Directive 77/799/EEC in this annex shall be replaced by the text of the said Article in the revised Directive 77/799/EEC if this revised Directive enters into force before the date from which the provisions of this Convention shall take effect.

ARTICLE 7

(**3**) Not reproduced. Copies of the Directive are available on the Commission web site http://europa.eu.int/comm/index–en.htm or on the Inland Revenue web site at http://www.hmrc.gov.uk/esd-guidance/index.htm.

(**4**) The text as in force at the time of the making of this Agreement is set out below.