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) (Netherlands Antilles) 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 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(**1**), 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) (Netherlands Antilles) 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 the Netherlands Antilles 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

(**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).

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

(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 THE NETHERLANDS ANTILLES AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION REGARDING SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

WHEREAS:

1. Article 17(2) of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income(**2**) provides that Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive from January 1, 2005, provided that:

— the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra from that same date apply measures equivalent to those contained in the Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

— all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that date automatic exchange of information in the same manner as is provided for in Chapter II of the Directive, or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12.

2. The Netherlands Antilles are not within the EU fiscal territory but are, for purposes of the Directive, an EU associated territory and as such are not bound by the terms of the Directive. However, the Kingdom of the Netherlands in respect of the Netherlands Antilles, on the basis of an agreement between the Netherlands Antilles and the Netherlands, is willing to enter into agreements with the Member States of the EU to apply from January 1, 2005, a withholding tax on the same terms as are contained in Articles 11 and 12 of the Directive during the transitional period defined in Article 10 thereof, and, after expiration of the transitional period, to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive.

3. The agreement between the Netherlands Antilles and the Netherlands, as stated in the previous paragraph, is contingent on the adoption by all the Member States of the laws, regulations and administrative provisions necessary to comply with the Directive, and on the requirements of Article 17 of the Directive being met.

4. Through this Convention, the Netherlands Antilles agrees to apply the provisions of the Directive, subject to what is otherwise agreed herein, in regard of Beneficial Owners that are residents of the United Kingdom of Great Britain and Northern Ireland and the United Kingdom of Great Britain and Northern Ireland agrees to apply the Directive in regard to Beneficial Owners that are residents of the Netherlands Antilles.

The Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of 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 the Directive and with the intentions of the Contracting States as laid down herein above, have agreed as follows:

ARTICLE 1

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

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 the Netherlands Antilles.

ARTICLE 2

Definitions

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

(a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands in respect of the Netherlands Antilles or the United Kingdom of Great Britain and Northern Ireland as the context requires;

(b) “The Netherlands Antilles” mean that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consists of the Island territories of Bonaire, Curacçao, Saba, St. Eustatius and the Dutch part of St. Maarten;

(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(s)” means the beneficial owner(s) according to Article 2 of the Directive;

(f) the term “Paying Agent(s)” means the paying agent(s) according to Article 4 of the Directive;

(g) the term “Competent Authority” means:

(i) in the case of the Netherlands Antilles: the Minister of Finance or his authorised representative.

(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(s)” means the interest payment(s) 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 the Articles 4 to 6. 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 the Netherlands Antilles, 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 Netherlands Antilles law and regulations. However, existing exemptions or dispensations, if any, provided on request to Beneficial Owners resident in the United Kingdom of Great Britain and Northern Ireland under these provisions shall cease to apply and no further exemptions or dispensations of this nature shall be provided to such Beneficial Owners.

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 of Article 7 of Directive 77/799/EEC.

ARTICLE 5

Transitional provisions

(1) During the transitional period referred to in Article 10 of the Directive, where the Beneficial Owner is resident in the United Kingdom of Great Britain and Northern Ireland and the Paying Agent is resident in the Netherlands Antilles, the Netherlands Antilles shall levy a withholding tax on Interest Payments at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter. During this period, the Netherlands Antilles shall not be required to apply the provisions of Article 4. It shall, however, receive information from the United Kingdom of Great Britain and Northern Ireland in accordance with that Article.

(2) The Paying Agent shall levy the withholding tax in the manner as described in Article 11, paragraphs 2 and 3 of the Directive.

(3) The imposition of withholding tax by the Netherlands Antilles shall not preclude the United Kingdom of Great Britain and Northern Ireland from taxing the income in accordance with its national law.

(4) During the transitional period, the Netherlands Antilles may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4, paragraph 2, of the Directive, established in the United Kingdom of Great Britain and Northern Ireland 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 interest paid to it or secured for it being communicated in accordance with the last subparagraph of that paragraph.

(5) At the end of the transitional period, the Netherlands Antilles shall be required to apply the provisions of Article 4 and shall cease to apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6. If, during the transitional period, the Netherlands Antilles elects to apply the provisions of Article 4, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6.

ARTICLE 6