Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788 (10), for an Address to Her Majesty from that House praying that the Order be made.

DRAFT STATUTORY INSTRUMENTS

2004 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Georgia) Order 2004

Made - - - - 2004

At the Court at Buckingham Palace, the day of 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of 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 may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Georgia) Order 2004.

Double taxation arrangements to have effect

2. It is hereby declared—

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Georgia with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Georgia;

(**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).

(b) that 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 Georgia concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

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

Clerk of the Privy Council

SCHEDULE

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Georgia;

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;

Have agreed as follows:

Article 1

Persons covered

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

Article 2

Taxes covered

(1) This Agreement shall apply to taxes on income and on capital 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 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 this Agreement shall apply are in particular:

(a) in the case of Georgia:

(i) the tax on profit (income) of enterprises;

(ii) the tax on property of enterprises;

(iii) the tax on income of individuals; and

(iv) the tax on property of individuals;

(hereinafter referred to as "Georgian 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").

(4) This Agreement shall also apply to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of this Agreement 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 Agreement, unless the context otherwise requires:

(a) the term "Georgia" means the territory within the state borders of Georgia, including land territory, internal waters and territorial sea, the air space above them, in respect of which Georgia exercises its sovereignty, as well as the exclusive economic zone and continental shelf adjacent to its territorial sea in respect of which Georgia may exercise its sovereign rights in accordance with international law;

(b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

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

(d) the term "person" includes an individual, a company and any other body of persons, and does not include a partnership;

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

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

(g) 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;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means:

(i) in the case of Georgia, the Ministry of Finance or its authorised representative;

(ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(j) the term "national" means:

(i) in relation to Georgia, any individual possessing the citizenship of Georgia and any legal person or association deriving its status as such from the law in force in Georgia;

(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 law in force in the United Kingdom;

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

(l) the term "capital" means movable and immovable property. It includes especially, but is not limited to, cash, shares or other documents evidencing property rights and bonds or other debt liabilities. It also includes patents, trade marks, copyrights or similar rights and property.

(2) As regards the application of this Agreement 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 laws of that State for the purposes of the taxes to which this Agreement 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 Agreement, 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 from sources in that 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 in accordance with the following rules:

(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 does not have 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 neither Contracting State, 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 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 Agreement, 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;

(f) a pipeline; and

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.