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

2003 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Canada) Order 2003

Made - - - - 2003

At the Court at Buckingham Palace, the day of 2003

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 the said 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:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Canada) Order 2003.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980(**2**), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) (No. 2) Order 1980(**3**), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1985(**4**), have been made with the Government of Canada with a view to affording relief from double taxation in relation to

(**1**) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).
(**2**) S.I.1980/709
(**3**) S.I. 1980/1528
(**4**) S.I. 1985/1996

income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Canada;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of Canada 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

PART I

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON 8TH SEPTEMBER 1978, AS AMENDED BY THE PROTOCOL SIGNED AT OTTAWA ON 15TH APRIL 1980 AND AS FURTHER AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 16TH OCTOBER 1985

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

Desiring to conclude a Protocol to amend further the Convention between the Governments of the Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at London on 8th September 1978, as amended by the Protocol signed at Ottawa on 15th April 1980 and as further amended by the Protocol signed at London on 16th October 1985 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

1. Sub-paragraph (c) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

> "(c) the term "person" includes an individual, a trust, a company, any entity treated as a unit for tax purposes and any other body of persons, but does not include a partnership;"

2. Clause (i) of sub-paragraph (h) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

> "(i) 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 that citizen or subject 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;"

ARTICLE II

Paragraph 3 of Article 4 of the Convention shall be deleted and replaced by the following:

> "**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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State of which the person shall be deemed to be a resident, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. If the competent authorities are unable to determine the matter by mutual agreement, they shall endeavour to determine by mutual agreement the mode of application of the Convention to that person."

ARTICLE III

Article 9 of the Convention shall be deleted and replaced by the following:

"ARTICLE 9

Associated enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included by a Contracting State in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then, subject to the provisions of paragraph 3 of this Article, that other State shall (notwithstanding any time limits in the domestic law of that other State) make an appropriate adjustment to the amount of tax charged therein on the profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. Where a Contracting State makes or proposes to make an adjustment in accordance with the provisions of paragraph 1 of this Article, the other Contracting State shall be required to make the appropriate adjustment provided for under paragraph 2 of this Article to the profits of the associated enterprise in that other State only if within six years from the end of the taxation year (in Canada) or the chargeable period (in the United Kingdom) to which the first-mentioned adjustment relates, the competent authority of the other State has been notified that the first-mentioned adjustment has been made or proposed.

4. The provisions of paragraphs 2 and 3 of this Article shall not impose any obligation on Canada in the case of fraud, wilful default or gross negligence or on the United Kingdom in the case of fraudulent conduct."

ARTICLE IV

1. Paragraphs 1 and 2 of Article 10 of the Convention shall be deleted and replaced by the following:

"**1.** Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if

the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

(a) 5 per cent. of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent. of the voting power in the company paying the dividends;

(b) 15 per cent. of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid."

2. Paragraph 3 of Article 10 of the Convention shall be deleted.

3. Paragraph 5 of Article 10 of the Convention shall be deleted and replaced by the following:

"**5.** The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply."

4. Paragraph 7 of Article 10 of the Convention shall be deleted and replaced by the following:

"**7.** The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment."

ARTICLE V

1. Paragraph 3 of Article 11 of the Convention shall be deleted and replaced by the following:

"**3.** Notwithstanding the provisions of paragraph 2 of this Article,

(a) interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Development Canada;

(b) interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the United Kingdom Export Credits Guarantee Department; and

(c) interest arising in a Contracting State and paid with respect to indebtedness in connection with the sale on credit by a resident of the other State of any equipment, merchandise or services, except where the sale or indebtedness was between related persons, shall be taxable only in the other State."

2. Paragraph 6 of Article 11 of the Convention shall be deleted and replaced by the following:

"**6.** The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply."