Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s 788(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) (Australia) 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) (Australia) Order 2003.

2. It is hereby declared—

(a) that the arrangements specified in the Convention 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 have been made with the Government of Australia 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 Australia;

(b) that those arrangements include provisions with respect to the exchange of information forseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of Australia concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(**1**) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

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

Clerk of the Privy Council

SCHEDULE

PART I

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains,

Have agreed as follows:
ARTICLE 1

Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.
ARTICLE 2

Taxes covered

1. The existing taxes to which this Convention shall apply are:

(a) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(b) in the case of Australia:

the income tax, the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, and the fringe benefits tax, imposed under the federal law of Australia.

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of the United Kingdom after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes that have been made in the law of their respective States relating to the taxes to which this Convention applies within a reasonable period of time after those changes.
ARTICLE 3

General definitions

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

(a) 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 seabed and subsoil and their natural resources may be exercised;

(b) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the Continental Shelf;

(c) the term "Australian tax" means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2;

(d) the term "United Kingdom tax" means tax imposed by the United Kingdom, being tax to which this Convention applies by virtue of Article 2;

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

(f) the term "person" includes an individual, a company and any other body of persons, but subject to paragraph 2 of this Article does not include a partnership;

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

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

(i) 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;

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

(k) the term "competent authority" means:

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

(ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;

(l) the term "national" means:

(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 individual has the right of abode in the United Kingdom; and any company deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Australia, an Australian citizen or an individual not possessing citizenship who has been granted permanent residency status; and any company deriving its status as such from the law in force in Australia;

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

(n) the term "tax" means Australian tax or United Kingdom tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;

(o) the term "recognised stock exchange" means:

(i) the Australian Stock Exchange and any other Australian stock exchange recognised as such under Australian law;

(ii) the London Stock Exchange and any other United Kingdom investment exchange recognised under United Kingdom law; or

(iii) any other stock exchange agreed upon by the competent authorities.

2. A partnership deriving its status from Australian law as a limited partnership which is treated as a taxable unit under the law of Australia shall be treated as a person for the purposes of this Convention.

3. As regards the application of this Convention 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 Convention 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

Residence

1. For the purposes of this Convention, a person is a resident of a Contracting State:

(a) in the case of the United Kingdom, if the person is a resident of the United Kingdom for the purposes of United Kingdom tax; and

(b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

A Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of this Convention.

2. A person is not a resident of a Contracting State for the purposes of this Convention if that person is liable to tax in that State in respect only of income or gains from sources in that State.

3. The status of an individual who, by reason of the preceding provisions of this Article is a resident of both Contracting States, shall be determined as follows:

(a) that individual shall be deemed to be a resident only of the Contracting State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;

(c) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.