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

2002 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Taiwan) Order 2002

Made - - - - 2002

At the Court at , the day of 2002

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) (Taiwan) Order 2002.

2. It is hereby declared—

(a) that the arrangements specified in the Agreement set out in Part I of the Schedule to this Order and in the Annex constituting an Agreement set out in Part II of that Schedule have been made in relation to the territory of Taiwan 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 Taiwan;

(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 Taiwan 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

AGREEMENT BETWEEN THE BRITISH TRADE AND CULTURAL OFFICE, TAIPEI AND THE TAIPEI REPRESENTATIVE OFFICE IN THE UNITED KINGDOM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The British Trade and Cultural Office, Taipei and the Taipei Representative Office in the United Kingdom, hereinafter referred to as the BTCO and the TRO;

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 gains;

Have agreed as follows:

ARTICLE 1

Persons covered

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

ARTICLE 2

Taxes covered

(1) This Agreement shall apply to taxes on income and on capital gains imposed in either of the territories, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes to which this Agreement shall apply are in particular:

(a) in the territory in which the taxation law administered by the United Kingdom Inland Revenue is applied:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:

(i) the profit seeking enterprise income tax; and

(ii) the individual consolidated income tax.

(4) This Agreement shall also apply to any identical or substantially similar taxes which are imposed in either territory after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the territories shall notify each other of any substantial changes which have been made in the taxation laws of the respective territories.

ARTICLE 3

General definitions

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

(a) the term "territory" means the territory referred to in paragraph (3)(a) or (3)(b) of Article 2 of this Agreement, as the case requires, and "other territory" and "territories" shall be construed accordingly;

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

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

(d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;

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

(f) the term "competent authority" means:

(i) in the case of the territory in which the taxation law administered by the United Kingdom Inland Revenue is applied, the Commissioners of Inland Revenue or their authorised representative;

(ii) in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, the Director-General of the Department of Taxation or his authorised representative.

(2) A partnership deriving its status from the law of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement which is treated as a taxable unit under the taxation law of that territory, shall be treated as a person for the purposes of the Agreement.

(3) As regards the application of this Agreement at any time in a territory, 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 territory for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

ARTICLE 4

Residence

(1) For the purposes of this Agreement, the term "resident of a territory" means any person who, under the laws of that territory, 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.

(2) A person is not a resident of a territory for the purposes of this Agreement if that person is liable to tax in that territory in respect only of income or capital gains from sources in that territory, provided that this paragraph shall not apply to individuals who are residents of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement, as long as resident individuals are taxed only in respect of income from sources in that territory.

(3) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both territories, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);

(b) if the territory 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 territory, he shall be deemed to be a resident only of the territory in which he has an habitual abode;

(c) if the individual has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

(4) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both territories, then it shall be deemed to be a resident only of the territory 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

(4) An enterprise of a territory shall be deemed to have a permanent establishment in the other territory if:

(a) it carries on supervisory activities in that other territory for more than six months in connection with a building site or construction or installation project which is being undertaken in that other territory.

(b) it furnishes services, including consultancy services, but only where activities of that nature continue, for the same or a connected project, through employees or other personnel or persons engaged by the enterprise for such purpose in the other territory for a period or periods aggregating more than six months within any twelve month period.

(5) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(6) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person is acting in a territory on behalf of an enterprise of the other territory—other than an agent of an