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

2001 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Lithuania) Order 2001

Made - - - - 2001

At the Court at , the day of 2001

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) (Lithuania) Order 2001.

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 the Republic of Lithuania 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 Lithuania;

(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 Lithuania 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 THE REPUBLIC OF LITHUANIA 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 the Republic of Lithuania;

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

Personal scope

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

ARTICLE 2

Taxes covered

(1) This Convention shall apply to taxes on income and on capital gains 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 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 the Convention shall apply are in particular:

(a) in the case of Lithuania:

(i) the tax on profits of legal persons (juridiniuç asmenuç pelno mokestis); and

(ii) the tax on income of natural persons (fiziniuç asmenuç pajamuç mokestis);

(hereinafter referred to as "Lithuanian 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) The Convention shall also apply to any identical or substantially similar taxes which are imposed 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 which have been made in their respective taxation laws.

ARTICLE 3

General definitions

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

(a) the term "Lithuania" means the Republic of Lithuania and, when used in the geographical sense, means the territory of the Republic of Lithuania and any other area adjacent to the territorial waters of the Republic of Lithuania within which, under the laws of the Republic of Lithuania and in accordance with international law, the rights of Lithuania may be exercised with respect to the sea bed and its sub-soil and their natural resources;

(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 term "national" means:

(i) in relation to Lithuania, any individual possessing the nationality of the Republic of Lithuania; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Republic of Lithuania;

(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;

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

(e) 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;

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

(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 of 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 Lithuania, the Minister of Finance or his authorised representative; and

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

(2) A partnership deriving its status from Lithuanian law and which is treated as a taxable unit under the law of Lithuania shall be treated as a person for the purposes of this Convention.

(3) As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which the Convention applies.

ARTICLE 4

Residence

(1) For the purposes of this Convention, 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; the term does not include any person who is liable to tax in that Contracting State in respect only of income or capital gains from sources situated therein.

(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 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 Contracting States, he shall be deemed to be a resident of the Contracting 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 has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting 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 of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, 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, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement. In the absence of such agreement, for the purposes of the Convention, the person shall not be entitled to claim any relief or exemption from tax provided by this Convention.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Convention, 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; and

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

(3) A building site, a construction, assembly or installation project constitutes a permanent establishment only if such site or project lasts for a period of more than six months.

(4) 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;