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

1999 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Kuwait) Order 1999

Made - - - - 1999

At the Court at , the day of 1999

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) (Kuwait) Order 1999.

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 Protocol as to the Interpretation and Application in the Contracting States of that Agreement set out in Part II of that Schedule have been made with the Government of the State of Kuwait 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 Kuwait;

(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 Kuwait concerning taxes covered by the arrangements; 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 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The United Kingdom of Great Britain and Northern Ireland and the State of Kuwait;

Desiring to promote their mutual economic relations by removing fiscal obstacles through the conclusion of 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

Personal scope

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 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, on total capital, or on elements of income or of capital, 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 the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax");

(b) in the case of Kuwait:

(i) the corporate income tax;

(ii) the contribution from the net profits of Kuwaiti shareholding companies payable to the Kuwaiti Foundation for Advancement of Science (KFAS);

(iii) the Zakat;

(hereinafter referred to as "Kuwaiti tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which 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 substantial changes which have been made in their respective taxation laws.
ARTICLE 3

General definitions

(1) For the purposes of this Agreement, 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 sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;

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

(d) the term "person" includes an individual, a company and any other body of persons, but does not include a partnership other than one deriving its status from Kuwaiti law and which is treated as a taxable unit under the laws of Kuwait;

(e) 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 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;

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

(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 the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(ii) in the case of Kuwait, the Minister of Finance or his authorised representative.

(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 which it has at that time under the law of that State for the purpose of 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:

(a) in the case of the United Kingdom, any person who, under the tax laws of the United Kingdom, is liable to tax therein by reason of his residence, place of management, place of incorporation or any other criterion of a similar nature;

(b) in the case of Kuwait, an individual who is a Kuwaiti national and who is present in Kuwait for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned, and a company which is incorporated or has its place of management in the State of Kuwait.

(2) A resident of a Contracting State shall also include the Government of that State and any political subdivision or local authority thereof.

(3) 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 his status cannot be determined under the provisions of sub-paragraphs (a) to (c), the competent authorities of the Contracting States 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 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 mine, an oil or gas well, a quarry or any other place relating to the exploration for, or exploitation of, natural resources.

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

(4) The term "permanent establishment" likewise encompasses the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State but only if activities of that nature continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve-month period.