

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

1998 No.

INCOME TAX

**The Double Taxation Relief (Taxes
on Income) (Kazakhstan) Order 1998**

Made - - - - 1998

At the Court at Buckingham Palace, the day of 1998
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) (Kazakhstan) Order 1998.
2. It is hereby declared—
 - (a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Kazakhstan) Order 1994(2), have been made with the Government of the Republic of Kazakhstan 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 Kazakhstan; and
 - (b) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).
(2) S.I.1994/3211.

Clerk of the Privy Council

SCHEDULE

PROTOCOL

BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AMENDING THE CONVENTION 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 21st MARCH 1994

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kazakhstan:

Desiring to conclude a Protocol to amend the Convention between the Contracting Parties 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 21st March 1994 (hereinafter referred to as “the Convention”):

Have agreed as follows:

ARTICLE I

Paragraph (10) of Article 11 of the Convention shall be deleted and replaced by the following:

“(10) Notwithstanding the provisions of paragraph (2) of this Article, but without prejudice to paragraph (4) of this Article, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State if it is:

- (a) paid by the Government of the first-mentioned State or a local authority thereof or any agency or instrumentality of that Government or local authority; or
- (b) derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority.”

ARTICLE II

The following new paragraphs shall be inserted immediately after paragraph (7) of Article 25 of the Convention:

“(8) Subject to paragraph (10) of this Article, nothing in this Convention shall be construed as preventing a Contracting State from imposing in any taxation year a tax on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State, in addition to the tax chargeable on those profits in accordance with Article 7 of this Convention, where—

- (a) the amount of that additional tax does not exceed 5 per cent. of the amount of the earnings of the company which have not been taken into account in calculating that additional tax in previous taxation years, and
- (b) the amount of the profits attributable to the permanent establishment in the taxation year in question exceeds 70,000 pounds sterling.

(9) In paragraph (8) of this Article, the term “earnings” means the profits attributable to the permanent establishment in accordance with Article 7 of the Convention (including any gains

from the alienation of movable property forming part of the business property of that permanent establishment in accordance with Article 13(3) of the Convention) in any taxation year for which paragraph (8) of this Article has effect in the case of that permanent establishment, after deducting therefrom all taxes chargeable in the first-mentioned Contracting State on those profits in accordance with Articles 7 and 13 of the Convention.

(10) If, and so long as, there is a Convention for the avoidance of double taxation which has effect between Kazakhstan and a member state of the Organisation for Economic Co-operation and Development for any taxation year for which paragraph (8) of this Article has effect and does not permit the levying of an additional tax of the kind described in that paragraph in the case of a permanent establishment of a company which is a resident of that member state, that paragraph shall not have effect in the case of a permanent establishment of a company which is a resident of the United Kingdom.”

ARTICLE III

(1) Each of the Contracting States shall notify through the diplomatic channel to the other the completion of the procedures required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Protocol enters into force;
- (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Protocol enters into force;

(b) in Kazakhstan, in respect of tax arising in taxable periods beginning on or after the first day of January in the calendar year next following that in which this Protocol enters into force.

In witness whereof the undersigned, duly authorised by their respective Governments have signed this Protocol.

Done in duplicate at London this 18th day of September 1997 in the English, Kazakh and Russian languages, all three texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

Doug Henderson

For the Government of the Republic of Kazakhstan:

A Yessimov

EXPLANATORY NOTE

(This note is not part of the Order)

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Kazakhstan) Order 1994.

The Protocol introduces into Article 11 of the Convention an exemption from tax in the source State where the interest is paid by the Government of that State, a local authority thereof, or any agency or instrumentality of that Government or local authority to a resident of the other State (Article I).

The Protocol amends the provisions of Article 25 of the Convention to provide that an additional tax at a rate not exceeding five per cent. may be imposed on the profits (where those exceed £70,000 in the tax year after deducting all taxes chargeable in the State imposing the additional tax) of a permanent establishment which a company resident in one State has in the other State. If Kazakhstan, under a Double Taxation Convention with a State, other than the United Kingdom, that is a member of the Organisation for Economic Co-operation and Development, may not charge the additional tax on permanent establishments in Kazakhstan of companies resident in that State, then the additional tax may not be charged on permanent establishments in Kazakhstan of companies resident in the United Kingdom (Article II).

The Protocol will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will then have effect in the United Kingdom on or after 1st April in respect of corporation tax and on or after 6th April for income tax and capital gains tax in the calendar year next following that in which it enters into force (Article III). The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.