

Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.

TAXES

**The Double Taxation Relief and International Tax Enforcement
(Montserrat) Order 2011**

Made - - - - *[day] [Month] 2011*

At the Court at Buckingham Palace, the [date] day of [Month] 2011

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(a) and section 173(7) of the Finance Act 2006(b) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Montserrat) Order 2011.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

- (a) the arrangement set out in Part 1 of the Schedule to this Order and specified in the Exchange of Letters set out in Part 2 of that Schedule, which varies the arrangement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1947(c) and amended by the arrangement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1968(d), has been made with the Government of Montserrat;

(a) 2010 c. 8.
(b) 2006 c. 25.
(c) S.I. 1947/2869 amended by S.I.1968/576
(d) S.I. 1968/576

- (b) the arrangement has been made with a view to affording relief from double taxation in relation to income tax, corporation tax and taxes of a similar character imposed by the laws of Montserrat and for the purpose of assisting international tax enforcement; and
- (c) it is expedient that the arrangement should have effect.

Name
Clerk of the Privy Council

PART 1

**ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND
THE GOVERNMENT OF MONTSERRAT AMENDING THE 1947
ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS
AMENDED BY THE 1968 ARRANGEMENT BETWEEN THE TWO
GOVERNMENTS**

Her Majesty's Government and the Government of Montserrat;

Desiring to improve the operation of the existing Arrangement between the two governments for the avoidance of double taxation;

Have arranged as follows:

1. In this Arrangement the term "the 1947 Arrangement" means the Arrangement made in 1947 between Her Majesty's Government and the Government of Montserrat for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as amended by the 1968 Arrangement between Her Majesty's Government and the Government of Montserrat.
2. After paragraph 2(1) (k) of the 1947 Arrangement there shall be inserted the following:
 - “(l) the term “competent authority” means:
 - (i) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (ii) in the case of Montserrat, the Comptroller of Inland Revenue.”
3. Paragraph 10 of the 1947 Arrangement shall be deleted and replaced with the following:

“10. Pensions, annuities and other similar remuneration paid to an individual who is a resident of one of the territories, other than pensions exempt from tax in that territory by virtue of paragraph 8(1) of this Arrangement, shall be taxable only in that territory.”
4. Paragraph 14 of the 1947 Arrangement shall be deleted and replaced with the following:
 - “14.—(1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of the territories concerning taxes of every kind and description imposed on behalf of the territories, insofar as the taxation thereunder is not contrary to this Arrangement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by paragraph 1 of this Arrangement.
 - (2) Any information received under sub-paragraph 1 of this paragraph by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in sub-paragraph 1, or the

oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorises such use.

(3) In no case shall the provisions of sub-paragraphs 1 and 2 of this paragraph be construed so as to impose on a territory a requirement:

(a) to carry out administrative measures at variance with the laws and administrative practice of that territory or of the other territory;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that territory or of the other territory;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(4) If information is requested by a territory in accordance with this paragraph, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The requirement in the preceding sentence is subject to the limitations of sub-paragraph 3 of this paragraph but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of sub-paragraph 3 of this paragraph be construed to permit a territory to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

5. After paragraph 14 of the 1947 Arrangement there shall be inserted the following new paragraph:

“14A.–(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The competent authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

(4) The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph.”

6. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force

on the date of the later of these notifications. The new paragraphs 2(1)(l), 14 and 14A of the 1947 arrangement shall thereupon have effect immediately. The new paragraph 10 of the 1947 Arrangement shall have effect:

- (a) in the United Kingdom: in respect of income tax, for any year of assessment beginning on or after the 6th April next following the date this Arrangement enters into force;
- (b) in Montserrat: in respect of Montserrat tax, for any year of assessment beginning on or after the 1st January next following the date this Arrangement enters into force.

PART 2

**EXCHANGE OF LETTERS
CONCERNING
AN ARRANGEMENT BETWEEN HER MAJESTY’S GOVERNMENT AND
THE GOVERNMENT OF MONTSERRAT AMENDING THE 1947
ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS
AMENDED BY THE 1968 ARRANGEMENT BETWEEN THE TWO
GOVERNMENTS**

7 December 2009

Sir,

I have the honour to propose to you–

the Arrangement further amending the 1947 Arrangement between Her Majesty’s Government and the Government of Montserrat for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“the Arrangement”) at Appendix 1 to this letter;

that the Arrangement shall have effect in accordance with the provisions of paragraph 6;

our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

I have the honour to propose that, if the above is acceptable to the Government of Montserrat, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

The United Kingdom welcomes this Arrangement as a significant step in establishing Montserrat’s status as a jurisdiction that complies with international standards in the field of taxation, and recognizes Montserrat’s commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

Please accept, Sir, the assurance of our highest consideration,

Chris Bryant MP

Parliamentary Under-Secretary of State

Foreign and Commonwealth Office

7 December 2009

Sir,

I have the honour to acknowledge receipt of your letter of 7th December 2009, which reads as follows:

“Sir,

I have the honour to propose to you–

the Arrangement further amending the 1947 Arrangement between Her Majesty’s Government and the Government of Montserrat for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“the Arrangement”) at Appendix 1 to this letter;

that the Arrangement shall have effect in accordance with the provisions of paragraph 6;

our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

I have the honour to propose that, if the above is acceptable to the Government of Montserrat, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

The United Kingdom welcomes this Arrangement as a significant step in establishing Montserrat’s status as a jurisdiction that complies with international standards in the field of taxation, and recognizes Montserrat’s commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

Please accept, Sir, the assurance of our highest consideration,”

I am able to confirm that the Government of Montserrat is in agreement with the contents of your letter dated 7th December 2009 and that this letter constitutes our mutual acceptance and making of the Arrangement contained in Appendix 1 to your letter and appended to this letter.

Please accept, Sir, the assurance of our highest consideration,

The Honourable Mr. Reuben T. Meade

Chief Minister

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an arrangement (“the New Arrangement”) which further amends an arrangement made in 1947 between the Government of the United Kingdom and the Government of Montserrat for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income (“the 1947 Arrangement”). The 1947 Arrangement was set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1947 (S.I. 1947/2869) and subsequently amended by an arrangement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1968 (S.I. 1968/576). This Order brings the New Arrangement into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the New Arrangement.

The 1947 Arrangement aims to eliminate the double taxation of income arising in one country and paid to residents of the other country. It does this by allocating the taxing rights that each country has under its domestic law over the same income, and/or by providing relief from double taxation. It also provides for assistance in international tax enforcement.

The New Arrangement continues that approach by updating the exchange of information article in the 1947 Arrangement to bring it into line with the new international standard for exchange of information as set out in the current Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development (“OECD”) and to cover taxes of every kind and description imposed by the two countries.

The New Arrangement also amends the provisions on the taxation of pensions (other than government service pensions) and introduces a ‘mutual agreement procedure’ to allow the Governments to consult on the interpretation and application of the 1947 Arrangement. This is consistent with the OECD Model Tax Convention.

The New Arrangement 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 take effect as follows:

- (a) in respect of the new paragraphs 2(1)(l), 14 and 14A of the 1947 Arrangement, on the date of entry into force; and
- (b) in respect of the new paragraph 10 of the 1947 Arrangement,
 - (i) in the United Kingdom, in respect of income tax, for any year of assessment beginning on or after 6th April next following the date the New Arrangement enters into force; and
 - (ii) in Montserrat, in respect of Montserrat tax, for any year of assessment beginning on or after 1st January next following the date the New Arrangement enters into force.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.

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