

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

2012 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Singapore) Order 2012**

Made - - - - - *[day] [Month] 2012*

At the Court at Buckingham Palace, the [date] day of [Month] 2012

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(1) and 173(7) of the Finance Act 2006(2) 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 (Singapore) Order 2012.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(1) 2010 c.8.
(2) 2006 c.25.

- (a) the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule of the Double Taxation Relief (Taxes on Income) (Singapore) Order 1997(3) have been made with the Government of the Republic of Singapore;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character imposed by the laws of the Republic of Singapore and for the purpose of assisting international tax enforcement; and
- (c) it is expedient that the arrangements should have effect.

Name
Clerk of the Privy Council

(3) S.I. 1997/2988; the arrangements scheduled to which were previously amended by the arrangements scheduled to S.I. 2010/2685.

SCHEDULE

Article 2

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED AT SINGAPORE ON 12 FEBRUARY 1997 AS AMENDED BY A PROTOCOL SIGNED AT SINGAPORE ON 24 AUGUST 2009

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Singapore,

Desiring to amend the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed at Singapore on 12 February 1997 as amended by a Protocol signed at Singapore on 24 August 2009 (hereinafter referred to as “the Agreement”),

Have agreed as follows:

ARTICLE I

With respect to Article 3 (General Definitions) of the Agreement:

1. Paragraph 1(e) shall be deleted and replaced by the following:

“(e) the term “person” includes an individual, a company and any other body of persons;”
2. Paragraph 1(i)(i) shall be deleted and replaced by the following:

“(i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;”
3. Paragraph 1(k) shall be deleted and replaced by the following:

“(k) the term “fiscal year” means,

 - (i) in the case of the United Kingdom:
 - for the purposes of the income tax, a year of assessment beginning on 6 April in one year and ending on 5 April in the following year;
 - for the purposes of the corporation tax, a year of assessment beginning on 1 April in one year and ending on 31 March in the following year; and,
 - (ii) in the case of Singapore, a calendar year.”
4. A new paragraph 2 shall be inserted after paragraph 1 as follows:

“2. For the purposes of Articles 10, 11 and 12 of this Agreement, a trustee subject to

tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of that interest or those dividends or royalties.”

5. The existing paragraph 2 of the Article shall be renumbered as paragraph 3.

ARTICLE II

With respect to Article 4 (Residence) of the Agreement:

1. Paragraph 1 shall be deleted and replaced by the following:

“1. For the purposes of this Agreement, 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, and also includes that State and any political subdivision, local authority or statutory body thereof.”

2. Paragraph 3 shall be deleted and replaced by the following:

“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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State in which the person's place of effective management is situated taking into consideration all relevant factors. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Agreement, except those provided by Articles 23, 25 and 26.”

ARTICLE III

With respect to Article 5 (Permanent Establishment) of the Agreement,

Paragraph 4(b) shall be deleted and replaced by the following:

“(b) it furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days in the fiscal year concerned;

provided that the provisions of subparagraph (b) shall cease to have effect for any fiscal year beginning after five years from the date on which the Second Protocol first had effect.”

ARTICLE IV

With respect to Article 10 (Dividends) of the Agreement:

1. Paragraphs 1, 2 and 3 shall be deleted and replaced by the following:

“1. Subject to the provisions of paragraph 2 of this Article, dividends paid by a company which is a resident of a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.

2. However,

(a) dividends paid by a real estate investment trust which is a resident of the United Kingdom may also be taxed, according to its laws, in the United

Kingdom. However, if the beneficial owner of the dividends is a resident of Singapore, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends;

(b) distributions paid by a real estate investment trust which is organised in Singapore may also be taxed, according to its laws, in Singapore. However, if the beneficial owner of the distributions is a resident of the United Kingdom, the tax so charged shall not exceed 15 per cent of the gross amount of the distributions.

This paragraph and paragraph 1 shall not affect the taxation of the company or the real estate investment trust in respect of the profits out of which the dividends or distributions are paid.

3. For the purposes of paragraph 2 of this Article, a real estate investment trust means:

(a) in the case of the United Kingdom, a real estate investment trust within the meaning of Part 12 of Corporation Tax Act 2010 and a property authorised investment fund within the meaning of Part 4A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964);

(b) in the case of Singapore, a trust that is constituted as a collective investment scheme authorised under section 286 of the Securities and Futures Act (Chapter 289) and listed on the Singapore Exchange, and that invests or proposes to invest in immovable property and immovable property-related assets.”

2. There shall be inserted at the end of paragraph 4 the following additional sentence:

“For the purposes of paragraphs 5, 6 and 7 of this Article, the term “dividends” also includes distributions within the meaning of subparagraph b) of paragraph 2 of this Article and reference to a company shall be read as including reference to a real estate investment trust as appropriate.”

ARTICLE V

With respect to Article 11 (Interest) of the Agreement:

1. Paragraphs 2, 3 and 4 shall be deleted and replaced by the following:

“2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 5 per cent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of that interest and:

- (a) is the Government of the other Contracting State;
- (b) is a bank or similar financial institution; or
- (c) the interest is paid by a bank or similar financial institution.

4. For the purposes of paragraph 3 of this Article, the term Government:

(a) in the case of Singapore, means the Government of Singapore and shall include:

- (i) the Monetary Authority of Singapore;
- (ii) the Government of Singapore Investment Corporation Pte Ltd;
- (iii) a statutory body; and
- (iv) any institution wholly or mainly owned by the Government of Singapore as may be agreed from time to time between the competent authorities of the Contracting States;

(b) in the case of United Kingdom, means the Government of the United Kingdom and shall include:

- (i) the Bank of England;
- (ii) the United Kingdom Export Credits Guarantee Department;
- (iii) CDC Group plc;
- (iv) a statutory body; and
- (v) any institution wholly or mainly owned by the Government of the United Kingdom as may be agreed from time to time between the competent authorities of the Contracting States.”

2. The first sentence of paragraph 7 shall be deleted and replaced by the following:

“Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State.”

ARTICLE VI

With respect to Article 12 (Royalties) of the Agreement:

1. Paragraph 2 shall be deleted and replaced by the following:

“2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 8 per cent of the gross amount of the royalties.”

2. Paragraph 3 shall be deleted and replaced by the following:

“3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.”

3. Paragraph 4 shall be deleted and the reference to paragraph 4 in paragraph 5 shall be deleted. The remaining paragraphs shall not be renumbered.

4. The first sentence of paragraph 6 shall be deleted and replaced by the following:

“Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State.”

ARTICLE VII

With respect to Article 14 (Independent Personal Services) of the Agreement:

Paragraph 1 shall be deleted and replaced by the following:

“1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in the other State is for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State;

provided that the provisions of subparagraph (b) shall cease to have effect for any fiscal year beginning after five years from the date on which the Second Protocol first had effect.”

ARTICLE VIII

With respect to Article 15 (Dependent Personal Services) of the Agreement:

1. Paragraph 1 shall be deleted and replaced by the following:

“1. Subject to the provisions of Articles 16, 18 and 19 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.”

2. Paragraph 3 shall be deleted and replaced by the following:

“3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.”

ARTICLE IX

With respect to Article 18 (Pensions) of the Agreement:

Subparagraph (a) of paragraph 1 shall be deleted and replaced by the following:

“(a) pensions and other similar remuneration paid in consideration of past employment or self-employment,”

ARTICLE X

With respect to Article 20 (Students and Trainees) of the Agreement:

Paragraphs 1 and 2 shall be deleted and replaced by the following:

“Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.”

ARTICLE XI

Article 21 (Teachers) of the Agreement shall be deleted and the subsequent Articles shall not be renumbered.

ARTICLE XII

With respect to Article 22 (Other Income) of the Agreement:

Paragraph 3 shall be deleted and replaced by the following:

“3. Notwithstanding the provisions of paragraph 1 of this Article, where an amount of income is paid to a resident of Singapore out of income received by trustees or personal representatives who are residents of the United Kingdom, that amount shall be treated as arising from the same sources, and in the same proportions, as the income received by the trustees or personal representatives out of which that amount is paid. Any tax paid by the trustees or personal representatives in respect of the income paid to the beneficiary shall be treated as if it had been paid by the beneficiary.

4. Notwithstanding the provisions of paragraph 1 of this Article, withdrawals made by a resident of the United Kingdom from his Supplementary Retirement Scheme account under section 10L of the Singapore Income Tax Act (Chapter 134)(revised edition 2008) may be taxed in Singapore.”

ARTICLE XIII

With respect to Article 23 (Elimination of Double Taxation) of the Agreement:

1. Paragraphs 1 and 2 shall be deleted and replaced by the following:

“1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Singapore tax payable under the laws of Singapore and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Singapore (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Singapore tax is computed;
- (b) a dividend which is paid by a company which is a resident of Singapore to a company which is a resident of the United Kingdom shall be exempted

from United Kingdom tax, when the conditions for exemption under the law of the United Kingdom are met;

- (c) in the case of a dividend not exempted from tax under sub-paragraph (b) above (because the conditions for exemption under the law of the United Kingdom are not met) which is paid by a company which is a resident of Singapore to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in sub-paragraph (a) above shall also take into account the Singapore tax payable by the company in respect of its profits out of which such dividend is paid.

2. In Singapore, double taxation shall be avoided as follows:

- (a) Where a resident of Singapore derives income from the United Kingdom which, in accordance with the provisions of this Agreement, may be taxed in the United Kingdom, Singapore shall, subject to its laws regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, allow the United Kingdom tax paid, whether directly or by deduction, as a credit against the Singapore tax payable on the income of that resident. Where such income is a dividend paid by a company which is a resident of the United Kingdom to a resident of Singapore which is a company owning directly or indirectly not less than 10 per cent of the share capital of the first-mentioned company, the credit shall take into account the United Kingdom tax paid by that company on the portion of its profits out of which the dividend is paid.
- (b) Where a resident of Singapore derives income from the United Kingdom, Singapore shall, subject to the conditions for exemption of income received from outside Singapore provided for in the Singapore Income Tax Act being satisfied, exempt such income from tax in Singapore.”

2. Paragraphs 4, 5 and 6 shall be deleted.

ARTICLE XIV

Article 24 (Limitation of Relief) of the Agreement shall be deleted and the subsequent Articles shall not be renumbered.

ARTICLE XV

With respect to Article 26 (Mutual Agreement Procedure) of the Agreement, there shall be inserted at the end of paragraph 3 the following additional sentence:

“They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.”

ARTICLE XVI

The United Kingdom shall notify Singapore, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Second Protocol. Upon such notification, when the necessary requirements for entry into force of this Second Protocol in Singapore have been complied with, Singapore shall notify the United Kingdom through diplomatic channels. The Second Protocol shall enter into force on the date of the notification made by Singapore to the United Kingdom and shall thereupon have effect:

- (a) in the United Kingdom:

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Double Taxation Relief and International Tax Enforcement (Singapore) Order 2012 No. 3078*

- (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 the Second 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 the Second Protocol enters into force;

(b) in Singapore:

in respect of Singapore tax for any year of assessment beginning on or after 1st January in the second calendar year following that in which the Second Protocol enters into force.

ARTICLE XVII

This Second Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments have signed this Protocol.

DONE in duplicate at Singapore on this 13th day of February 2012

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

**For the Government of the Republic of
Singapore**

Lord Green of Hurstpierpoint

Mrs Josephine Teo

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol (“the Protocol”) which further amends an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Singapore for the Avoidance of Double Taxation with Respect to Taxes on Income (“the Agreement”). The Agreement was scheduled to the Double Taxation Relief (Taxes on Income) (Singapore) Order 1997 (S.I. 1997/2988) and previously amended by the arrangements scheduled to the Double Taxation Relief and International Tax Enforcement (Singapore) Order 2010 (S.I. 2010/2685). This Order brings the Protocol into effect.

The Agreement 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 has specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The Protocol continues this approach.

The Protocol amends the Articles of the Agreement relating to residence, interest, dividends, royalties and independent personal services and brings them into line with the approach adopted in the Organisation for Economic Cooperation and Development’s (“OECD”) Model Tax Convention on Income and on Capital.

Article 1 provides for citation.

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

The United Kingdom will notify Singapore upon completion of the legislative procedures required for the Protocol to enter force. Singapore will then notify the United Kingdom when it has also completed its legislative procedures and the Protocol will enter force on the date of that notification. It will take effect as follows:

- (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 the 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 the Protocol enters into force;
- (b) in Singapore:
 - (i) in respect of Singapore tax for any year of assessment beginning on or after 1st January in the second calendar year following that in which the Protocol enters into force.

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

A Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.