EXPLANATORY MEMORANDUM TO
THE DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (TAXES ON INCOME AND CAPITAL) (FAROES) ORDER 2007

2007 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

The draft Order brings into effect those arrangements specified in the Convention set out in the attached Annexe.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 Type of resolution

The draft Order is subject to the affirmative resolution procedure.

3.2 Details of the Convention

Further details of the Double Taxation Convention scheduled to the draft Order are annexed to this memorandum.

4. Legislative Background

4.1 General

The Convention and Protocol are scheduled to this draft Order which is made under the powers contained in section 788(1) of the Income and Corporation Taxes Act 1988 (c.1) (ICTA) as extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c.12), and under section 173(1) of the Finance Act 2006 (c.25) (FA). It is thus given domestic legislative effect.

This draft Order is made under s 788(10) of ICTA 1988 and s 173(7) of FA 2006.

Section 788 of ICTA 1988 provides the mechanism by which arrangements made with overseas territories for the purpose of affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character in the other territory are given effect in the United Kingdom.

Section 173 of FA 2006 provides the mechanism by which such arrangements may also include provisions about, among other things, the exchange of

information foreseeably relevant to the administration, enforcement or recovery of any tax or duty.

4.2 EU Legislation

This instrument does not implement EU legislation.

5. Extent

The draft Order applies to the whole of the United Kingdom.

6. European Convention on Human Rights

The [Financial Secretary (Jane Kennedy)] has made the following statement regarding Human Rights:

In my view the provisions of the draft Double Taxation Relief (Taxes on Income) (Faroes) Order 2007 are compatible with the Convention rights.

7. Policy background

Double Taxation Conventions aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by dividing the taxing rights that each treaty partner has under its domestic law over the same income and gains. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, Conventions benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens. Double Taxation Conventions also serve an Exchequer protection role by including provisions to combat avoidance and evasion — not least by measures providing for the exchange of information between revenue authorities. They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no regulatory impact on business, charities or voluntary bodies. Taxpayers may have to make a claim to HM Revenue & Customs or the other country's fiscal authority in order to benefit from the Convention. However, taxpayers will benefit from reduced compliance burdens and, in many cases, from having to deal with just one fiscal authority.

8.2 The impact on the public sector is that because of the nature of a Double Taxation Convention, one or both of the countries gives up all or part of their taxing rights so that a given source of income is taxed only once. Measured against a baseline of single taxation only, Conventions do not therefore generally have an exchequer cost; rather, by encouraging cross-border economic activity, they can lead to an increase in tax revenue. But where double taxation is

unrelieved, the economic activity in question, and hence the higher tax revenue attributable to it, will often be only temporary.

9. Contact

Geoff Barnard at HM Revenue & Customs (Tel: 020 7147 2734 / Email: Geoff.Barnard@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

ANNEXE

GENERAL

All the United Kingdom's recent Double Taxation Conventions largely follow the approach adopted in the OECD's *Model Tax Convention on Income and on Capital*. This Convention continues that approach.

NOTES ON DETAILS

ARTICLE 1 – PERSONS COVERED

This Article sets out the general scope of the Convention.

The Convention is to apply to persons who are residents of one or both of the countries (the United Kingdom and Faroes). The Faroes is not a sovereign state; it is a self-governing overseas administrative division of Denmark. But the term "country" is used for convenience.

ARTICLE 2 – TAXES COVERED

This Article lists the taxes to which the Convention is to apply.

The existing Faroese taxes to which the Convention applies are the national tax on income, the municipal tax on income, the tax on capital gains, the tax on royalty and the tax on revenue relating to hydrocarbon activities.

The existing United Kingdom taxes to which the Convention applies are the income tax, the corporation tax, the capital gains tax, the petroleum revenue tax and the supplementary charge in respect of ring fence trades. (See paragraph 2 of the Protocol for the reason behind the inclusion of the latter two taxes.)

The Convention will also apply to any identical or substantially similar taxes subsequently imposed by either country in addition to or in place of the taxes mentioned above, and it obliges each country to notify the other of changes in their laws that significantly affect that country's obligations under the Convention.

ARTICLE 3 – GENERAL DEFINITIONS

This Article defines a number of terms used in the Convention and provides a rule for determining the meaning of terms not defined in the Convention.

ARTICLE 4 - RESIDENT

This Article establishes the meaning of "resident of" the United Kingdom or the Faroes and lays down detailed rules for resolving cases where individuals or other persons may be considered residents of both countries for tax purposes under their domestic laws.

ARTICLE 5 – PERMANENT ESTABLISHMENT

This Article defines the term "permanent establishment". It sets out when an enterprise will be deemed to have a permanent establishment in the other country. It also provides that a building site, construction, installation or assembly project, or connected on-site supervisory or consultancy services will constitute a permanent establishment if it lasts for more than twelve months, unless the project or associated building site is connected with the construction or installation of a pipeline to transport oil or gas, in which case it will be a permanent establishment regardless of whether or not it lasts for more than 12 months.

Taken with Article 7, it prescribes in general terms the circumstances and manner in which businesses of one country may be taxed on their profits arising in the other.

ARTICLE 6 – INCOME FROM IMMOVABLE PROPERTY

This Article allows the country in which the property is situated to tax income from immovable property. It also defines immovable property.

ARTICLE 7 – BUSINESS PROFITS

This Article provides that unless an enterprise of one country carries on business in the other through a permanent establishment situated there, its profits will be taxable only in its country of residence. Where the enterprise has a permanent establishment in the other country, that country will be entitled to tax profits attributable to the permanent establishment.

ARTICLE 8 – SHIPPING AND AIR TRANSPORT

Paragraph 1 provides that profits of an enterprise of one country from the operation of ships or aircraft in international traffic shall be taxable only in that country.

Paragraph 2 provides that profits from the operation of ships or aircraft include profits from the rental of ships, aircraft or the use, maintenance or rental of containers. In each case the rental or use, maintenance or rental must be incidental to the operations in international traffic.

Paragraph 3 clarifies that paragraphs 1 also applies to profits from participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – ASSOCIATED ENTERPRISES

This Article governs the evaluation for tax purposes of transfers of goods, services, finance and intangible property between associated enterprises. It is based upon the "arm's length principle", which requires such transfers to be evaluated as if they had taken place between independent enterprises.

Paragraph 1 confirms that a country may adjust the profits of a resident enterprise where conditions made or imposed between it and an associated enterprise of the other country differ from those that would be made between independent enterprises. The first country may adjust the profits of its enterprise to the level of profits which would have been earned by the enterprise if it had transacted the business in question at arm's length.

Paragraph 2 provides that, where the profits of an enterprise are adjusted in accordance with paragraph 1 the other country shall make a corresponding adjustment to the tax charged on the profits of its enterprise, in order to relieve the double taxation which might otherwise arise as a result of an adjustment by just one country.

ARTICLE 10 – DIVIDENDS

This Article contains the rules for the taxation of dividends paid by a company that is a resident of one country to a resident of the other country.

Paragraph 1 provides that dividends paid by a company resident in one country to a resident of the other country may be taxed in that other country.

Paragraph 2 provides that the country of which the company paying the dividends is a resident may also tax the dividends, but it places a limit on the amount of tax which may be charged by that country. The tax charged by that country may not exceed 5 per cent of the gross amount of the dividends when the beneficial owner is a company which owns at least 10 per cent of the capital of the company paying the dividends. In all other cases the tax is limited to 15 per cent of the gross amount of the dividends.

Paragraph 3 provides that dividends will not be taxed in the country in which the company paying the dividends is resident if the beneficial owner of the dividends is resident in the other country and operates a pension scheme there.

Paragraph 4 defines the term "dividends".

Paragraph 5 provides that paragraphs 1 to 3 shall not apply where a resident of a country receives dividends from the other country and the dividends are attributable to a permanent establishment through which that resident carries on business in the country of which the payer is a resident. In such circumstances, the taxation of the dividends is governed by Article 7 (Business Profits).

Paragraph 6 prevents the extra-territorial taxation by one country of dividends paid by a company that is a resident of the other country. The first country may not tax the dividends unless they are attributable to a permanent establishment in that country or are paid to a resident of that country. There is a similar provision concerning undistributed profits.

Paragraph 7 contains anti-abuse provisions to ensure that the provisions of the Article will not apply to any dividend paid under arrangements where the main purpose, or one of the main purposes, in assigning or creating the relevant shares, is to take advantage of the Article.

ARTICLE 11 – INTEREST

This Article contains the rules for the taxation of interest paid by a resident of one country to a resident of the other country.

Paragraph 1 provides that interest arising in one country and beneficially owned by a resident of the other country shall be taxable only in that other country.

Paragraph 2 defines "interest".

Paragraph 3 provides that paragraph 1 shall not apply where a resident of a country receives interest from the other country and the interest is attributable to a permanent establishment through which that resident carries on business in that other country. In such circumstances, the taxation of the interest is governed by Article 7 (Business Profits).

Paragraph 4 provides that where, because of a special relationship between the payer and the recipient, the amount of interest paid exceeds the amount which would have been paid in the absence of that special relationship, the Article will apply only to the interest that would have been payable in the absence of the special relationship. The "excess" part of the payment shall remain taxable according to the laws of each country.

Paragraph 5 contains anti-abuse provisions to ensure that the benefits of the Article will not apply to interest paid under arrangements where the main purpose, or one of the main purposes, of the creation or assignment of the relevant debt claim is to take advantage of the Article.

ARTICLE 12 – ROYALTIES

This Article contains the rules for the taxation of royalties arising in one country and derived by a resident of the other country.

Paragraph 1 provides that royalties arising in one country and beneficially owned by a resident of the other shall be taxable only in that other country.

Paragraph 2 defines the term "royalties".

Paragraph 3 provides that paragraph 1 shall not apply where a resident of a country receives royalties from the other country and the royalties are attributable to a permanent establishment through which that resident carries on business in that other country. In such circumstances, the taxation of the royalties is governed by Article 7 (Business Profits).

Paragraph 4 provides that where, because of a special relationship between the payer and the recipient, the amount of royalties paid exceeds the amount which would have been paid in the absence of that special relationship, the Article will apply only to the amount that would have been agreed upon by the two parties in the absence of the special

relationship. The "excess" part of the payment shall remain taxable according to the laws of each country.

Paragraph 5 contains anti-abuse provisions to ensure that the benefits of the Article will not apply to royalties paid under arrangements where the main purpose, or one of the main purposes, of the creation or assignment of the relevant right or property is to take advantage of the Article.

ARTICLE 13 – CAPITAL GAINS

This Article contains the rules for the taxation of gains deriving from the alienation of property situated in one country by a resident of the other.

Paragraph 1 provides that gains derived by a resident of one country that are attributable to the alienation of immovable property situated in the other country may be taxed in the country in which the property is situated.

Paragraph 2 provides that, subject to certain conditions, gains derived from the sale of shares in a company or an interest in a partnership where the shares or interest derive their value from immovable property situated in a country, may be taxed in that country.

Paragraph 3 provides that gains derived by an enterprise of a country from the alienation of movable property forming part of the business property of a permanent establishment maintained by that enterprise in the other country may be taxed in that other country. The paragraph also applies to gains derived from the alienation (in whole or in part) of such a permanent establishment.

Paragraph 4 provides that gains derived by a resident of a country from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation or use of such ships or aircraft shall be taxable only in the country where the alienator is resident.

Paragraph 5 provides that gains derived by a resident of a country from the alienation of containers and equipment for the transport of containers used to transport goods and merchandise in international traffic shall be taxable only in the country where the alienator is resident.

Paragraph 6 provides that gains from the alienation of any property, other than that detailed in paragraphs 1 to 5, shall be taxable only in the country of which the alienator is a resident.

Paragraph 7 contains anti-abuse provisions to ensure that the provisions of paragraph 6 shall not affect the right of a country to tax someone in respect of gains when that person had been resident in that country during the previous six fiscal years or who was resident in the year in which the property was alienated.

ARTICLE 14 – INCOME FROM EMPLOYMENT

This Article contains the rules for the taxation of employment income.

Paragraph 1 provides that employment income of a resident of a country shall be taxable only in that country unless the employment is exercised in the other country. In the latter case the income may, subject to certain conditions, be taxed in the other country.

Paragraph 2 sets out those conditions. They are:

(a) that the employee is in that country for more than 183 days in any 12 months period; or

(b) that the remuneration is paid by or on behalf of an employer who is a resident of that country; or

(c) that the remuneration is borne by a permanent establishment which the employer has in that country.

Paragraph 3 provides that remuneration derived by a resident of a country from an employment aboard a ship or aircraft operated in international traffic may be taxed in the country where the enterprise operating the ship or aircraft is resident.

ARTICLE 15 – DIRECTORS' FEES

This Article provides that directors' fees, etc. may be taxed in the country of which the company paying them is a resident.

ARTICLE 16 – ARTISTES AND SPORTSMEN

This Article contains the rules for the taxation of income derived from personal activities as an entertainer or sportsman.

Paragraph 1 provides that income of a resident of a country from his activities as an entertainer or sportsman in the other country may be taxed in that other country.

Paragraph 2 provides that income may be taxed in the country in which those activities are exercised irrespective of whether the income accrues to the entertainer or sportsman himself or to some other person.

ARTICLE 17 – PENSIONS AND SOCIAL SECURITY PAYMENTS

This Article contains the rules for the taxation of pensions and social security payments.

Paragraph 1 provides that, subject to the exceptions in paragraphs 2 and 3, pensions and other similar remuneration (other than government service pensions) paid to a resident of a country shall be taxable only in that country.

Paragraph 2 provides that social security pensions paid to a resident of a country under the social security legislation of the other country shall be taxable only in the other country.

Paragraph 3 provides that lump sums derived from a pension scheme in one country and beneficially owned by a resident of the other country shall be taxable only in the first country.

Paragraphs 4, 5 and 6 provide rules and conditions for the tax treatment of pension contributions made by or on behalf of an individual to a pension scheme in one country while working in the other country. Broadly such contributions are to be treated in the same manner as purely domestic pension contributions, both for determining the individual's tax and any taxable profits their employer may have in the state in which the employee is working.

ARTICLE 18 – GOVERNMENT SERVICE

This Article contains rules for the taxation of remuneration and pensions paid in respect of Government Service.

Paragraph 1 provides that remuneration paid from the public funds of a country, or of one of its political sub-divisions or local authorities, will generally be taxable only in that country. However such remuneration will be taxable only in the other country if the services are rendered in that other country by a national of that other country who is resident there or by a resident of that country who, although not one of its nationals, became a resident not solely to render the services.

Paragraph 2 provides that a pension paid out of the public funds of a country, or of one of its political sub-divisions or local authorities be taxable only in that country. Such pensions will, however, be taxable solely in the other country if the recipient is a resident and a national of that other country.

Paragraph 3 provides that paragraphs 1 and 2 shall not apply to remuneration or pensions for services rendered in connection with a business. Such income will be dealt with under Article 14, 15, 16 or 17 as appropriate.

ARTICLE 19 – STUDENTS

This Article provides that payments for the maintenance, education or training of a student or business apprentice who is present in a country for full-time education or training and who, immediately before visiting that country, was a resident of the other country, will not be taxed in the first-mentioned country, provided the payments are made from sources outside that country.

ARTICLE 20 – OTHER INCOME

This Article contains the rules for the taxation of income not dealt with elsewhere in the Convention.

Paragraph 1 provides that income not covered elsewhere in the Convention will be taxed only by the country of which the recipient is a resident.

Paragraph 2 provides an exception to the rule in paragraph 1 for income paid out of trusts or the estates of deceased persons in the course of administration. The beneficiary is to be treated as though the payment they have received is made up from the individual sources of income received by the trustees or personal representatives, rather than being a single new source of income. The beneficiary will receive the relief due under the Convention attributable to the various sources of income.

Paragraph 3 provides that paragraph 1 shall not apply, except in the case of income from immovable property, where the beneficial owner of the income is a resident of a country and carries on business in the other country through a permanent establishment and the income is attributable to the permanent establishment. In such circumstances, the taxation of the income is governed by Article 7 (Business Profits).

Paragraph 4 provides that where, because of a special relationship between the payer and the recipient, the amount of the income referred to in paragraph 1 exceeds the amount which the two parties would have agreed upon in the absence of that special relationship, the Article will apply only to the amount that would have been agreed upon by them in the absence of the special relationship. The "excess" part of the income shall remain taxable according to the laws of each country.

Paragraph 5 contains anti-abuse provisions to ensure that the provisions of the Article will not apply to income paid under arrangements where the main purpose, or one of the main purposes, in assigning or creating the rights relating to that income is to take advantage of the Article.

ARTICLE 21 – MISCELLANEOUS RULES APPLICABLE TO CERTAIN OFFSHORE ACTIVITIES

This Article contains the rules for the operation of the Convention when activities are carried out offshore, primarily in respect of the exploration for or exploitation of oil and gas resources.

Paragraph 1 sets out when the provisions of the Article will apply.

Paragraph 2 provides that an enterprise of a country carrying on offshore activities in the other country shall be considered to be carrying on a business through a permanent establishment in the other country.

Paragraph 3 provides that, notwithstanding paragraph 2 of the Article, profits of an enterprise of a country derived from transportation of supplies or personnel by ship or aircraft to or between locations in the other country where offshore activities are taking place, or from the operation of tugboats and other vessels auxiliary to such activities shall be taxable in the first country.

Paragraph 4 provides that gains from the alienation of ships or aircraft or from movable property pertaining to the operation of such ships or aircraft for the operations covered by paragraph 3 of the Article shall be taxable only in the country in which the alienator is resident.

Paragraph 5(a) provides that remuneration paid to a resident of a country for employment in offshore activities in the other country – other than activities covered by paragraph 3 of the Article – may be taxed in the other country.

Paragraph 5(b) provides that remuneration paid to a resident of a country in respect of employment on board a ship or aircraft operated by an enterprise of a country and carrying out activities described in paragraph 3 of the Article may be taxed in that country.

Paragraph 6 provides that gains derived by a resident of a country from the alienation of certain assets or rights connected with offshore activities in the other country may be taxed in the other country.

ARTICLE 22 – ELIMINATION OF DOUBLE TAXATION

This Article sets out the methods by which the countries will relieve double taxation.

Paragraph 1 sets out how the Faroes will relieve double taxation.

Sub-paragraph (a) provides that where a resident of the Faroes derives income which, under this Convention, may be taxed in the United Kingdom the Faroes shall allow, within certain limits, a deduction from the tax on that income an amount equal to the income tax paid in the United Kingdom.

Sub-paragraph (b) provides that where a resident of the Faroes derives income which, under this Convention, shall be taxed only in the United Kingdom, the Faroes may include this income in the tax base but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from the United Kingdom.

Paragraph 2 sets out how the United Kingdom will relieve double taxation.

Sub-paragraph (a) provides that Faroese tax on profits, income or chargeable gains from sources within Faroes is to be allowed as a credit against any UK tax computed by reference to the same income, profits or chargeable gains.

Sub-paragraph (b) provides that, in the case of a dividend paid by a company resident in Faroes to a company resident in the UK which controls at least 10 per cent of the voting power in the paying company, the credit will take into account Faroese tax payable by the company in respect of the profits out of which the dividend is paid. .

Paragraph 3 provides that, for the purposes of paragraphs 1 and 2, profits, income and capital gains owned by a resident of one country which may be taxed in the other country

under the terms of the Convention, will be deemed to arise from sources in that other country.

Paragraph 4 sets out how a country is to relieve double taxation on gains .

Sub-paragraph (a) provides that where gains may be taxed by a country only by reason of paragraph 7 of Article 13, then that country only shall eliminate double taxation by the methods set out in the Article as if the gains arose in the other country.

Sub-paragraph (b) provides that gains which may be taxed by a country by reason of paragraphs 1, 2 or 3 of Article 13, the other country shall eliminate double taxation by the methods set out in paragraphs 1 or 2 of the Article.

ARTICLE 23 – MISCELLANEOUS RULES

This Article sets out rules for situations not covered in other Articles.

Paragraph 1 provides that, where tax on any income or gains is determined in one country by reference only to the amount actually remitted to or received in that country, relief given in the other country under the Convention will be restricted to that part of the income or gains that is taxed in the first-mentioned country.

Paragraph 2 provides for income, profit or gain derived through a fiscally transparent person to be considered to be derived by a resident of a country to the extent that the income, profit or gain is treated for the purposes of the taxation law of the country as the income, profit or gain of a resident.

ARTICLE 24 – NON-DISCRIMINATION

Subject to certain provisos the Article provides that neither country shall impose discriminatory taxes (or requirements) on nationals, permanent establishments or enterprises of the other country.

Paragraph 1 sets out the basic principle that nationals of a country shall not be subjected in the other country to any taxation, or any requirement connected with taxation, which is more burdensome than those imposed on nationals of the other country who are in the same circumstances, particularly with respect to residence.

Paragraph 2 is concerned with the taxation of permanent establishments; it provides that a permanent establishment maintained by an enterprise of a country in the other country may not be exposed in that other country to taxation which is less favourably levied than the taxation levied on enterprises of that other country carrying on the same activities.

Paragraph 3 does not oblige a country to grant to individuals not resident in that country any of the personal allowances, reliefs and reductions for tax purposes which are granted to residents of that country.

Paragraph 4 provides that interest, royalties and other disbursements paid by an enterprise of a country to a resident of the other country shall be deductible in computing the payer's taxable profits in the same way as if they had been paid to a resident of the first country. This rule does not apply, however, where certain other specified provisions of the Convention apply; these are the "special relationship" and anti-abuse" provisions in Articles 10, 11, 12 and 20, and paragraph 1 of Article 9.

Paragraph 5 provides that enterprises of a country which are wholly or partly owned or controlled, directly or indirectly, by residents of the other country shall not be subjected to any taxation, or any requirement connected with taxation, which is more burdensome than the taxation or requirements to which other similar enterprises of the first country are subjected.

Paragraph 6 states that the provisions of the Article shall apply to taxes covered by this Convention.

ARTICLE 25 – MUTUAL AGREEMENT PROCEDURE

This Article authorises the competent authorities of the two countries to endeavour to resolve, by mutual agreement, cases of taxation not in accordance with the Convention and to settle points of doubt or difficulty in the application or interpretation of the Convention.

Paragraph 1 provides that, where a person considers that the actions of one or both countries will result in taxation not in accordance with the Convention, he may present his case to the competent authority of the country of which he is a resident or national. This right applies irrespective of any remedies provided by domestic law.

Paragraph 2 requires the competent authority to which the case is presented to endeavour, if it considers the objection justified and if it is unable to deal with the matter unilaterally, to resolve the case by mutual agreement with the competent authority of the other country. The paragraph also provides that any agreement reached between the competent authorities shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the countries, except such limitations as apply for the purposes of giving effect to such an agreement.

Paragraph 3 provides that the competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising over the interpretation or application of the Convention.

Paragraph 4 permits the competent authorities to communicate directly with one another (i.e. not through diplomatic channels) for the purposes of reaching agreement under the Article.

ARTICLE 26 – EXCHANGE OF INFORMATION

This Article contains rules governing the exchange of information between the countries.

Paragraph 1 requires the competent authorities to exchange such information as is foreseeably relevant for carrying out the provisions of the Convention or of their domestic laws. This requirement extends to all taxes imposed by the countries and not just to those taxes otherwise covered by the Convention. The exchange of information is not restricted by Articles 1 and 2; this means that information relating to taxes of every kind and description as well as to persons who are not residents of either country may be exchanged.

Paragraph 2 provides that information exchanged in accordance with paragraph 1 shall be treated as secret, although it may be disclosed to certain specified persons or authorities. Such information may be disclosed in public court proceedings or in judicial decisions.

Paragraph 3 imposes certain limitations on the exchange of information. Paragraphs 1 and 2 cannot impose an obligation on a country to carry out administrative measures at variance with the laws and administrative practices of either country or to supply information which is not obtainable under the laws or in the normal course of the administration of either country or to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process, or information whose disclosure would be contrary to public policy.

Paragraph 4 provides that the country from which information is requested shall use its information gathering powers to obtain the requested information even though that country may have no domestic tax interest in that information. The obligation is subject to the limitations of paragraph 3 but a country cannot decline to supply information solely because it has no domestic tax interest in that information.

Paragraph 5 makes clear that paragraph 3 cannot be applied to permit a country to decline to supply requested information solely because the information is held by certain entities such as banks.

ARTICLE 27 – ASSISTANCE IN THE COLLECTION OF TAXES

This Article provides the rules under which the countries may provide assistance to each other in the collection of their taxes.

Paragraph 1 sets out the principle that the countries shall be obliged to assist each other in the collection of taxes owed "revenue claims" provided the conditions of the Article are met. The assistance is not restricted by Articles 1 and 2 and competent authorities may by mutual agreement settle the mode of application of the Article.

Paragraph 2 defines the term "revenue claims" for the purposes of the Article. The definition applies to any amount owed in respect of all taxes that are imposed on behalf of the countries, or their political subdivisions or local authorities, but only insofar as that taxation is not contrary to the Convention or any other instrument to which the countries are parties. It also applies to interest, administrative penalties and costs of collection or conservancy related to such amount. Assistance is not therefore restricted to taxes to which the Convention generally applies pursuant to Article 2, as is confirmed in paragraph 1.

Paragraph 3 sets out the conditions under which a request for assistance in collection can be made. The revenue claim has to be enforceable under the laws of the requesting country and be owed by a person who, at that time, cannot, under the law of that country, prevent its collection. This will be the case where the requesting country has the right, under its internal law, to collect the revenue claim and the person owing the amount has no administrative or judicial rights to prevent such collection.

Paragraph 4 enables a country to safeguard its collection rights by taking measures of conservancy even where it cannot yet ask for assistance in collection.

Paragraph 5 provides that the time-limits of the requested country, beyond which a revenue claim cannot be enforced or collected, shall not apply to a revenue claim in respect of which the other country has made a request under paragraph 3 or 4.

Paragraph 6 ensures that any legal or administrative objection concerning the existence, validity or the amount of a revenue claim of the requesting country shall not be dealt with by the requested country's courts and administrative bodies. This prevents administrative or judicial bodies of the requested country from being asked to decide matters which concern whether an amount, or part thereof, is owed under the internal law of the other country.

Paragraph 7 provides that if, after a request has been made under paragraph 3 or 4, the conditions that applied when such request was made cease to apply, the country that made the request must promptly notify the other country of this change of situation. It provides that, following the receipt of such a notice, the requested country may ask the requesting country to either suspend or withdraw the request. If the request is suspended, the suspension should apply until such time as the requesting country informs the other country that the conditions necessary for making a request are again satisfied, or that it withdraws the request.

Paragraph 8 contains certain limitations to the obligations imposed on the country which receives a request for assistance.

ARTICLE 28 – MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

This Article ensures that diplomatic or consular officials shall not receive less favourable treatment under the Convention than they are entitled to under international law or under the provisions of special agreements (such as the Vienna Convention on Diplomatic Relations).

ARTICLE 29 – ENTRY INTO FORCE

This Article contains the provisions governing how and when the Convention will enter into force and take effect.

Paragraph 1 provides that each country will notify the other through diplomatic channels of the completion of the necessary domestic legal procedures required to bring the Convention into force.

Paragraph 2 provides that it will take effect:

a. in the case of Faroes from 1st January in the calendar year next following that in which the Convention enters into force.

b. in the case of the United Kingdom for income tax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following the year in which the Convention enters into force. Similarly, for corporation tax, the relevant date is 1st April in the calendar year next following the year in which the Convention enters into force.

ARTICLE 30 – TERMINATION

This Article contains provisions for the termination of the Convention.

This Article provides that the Convention may be terminated by either country giving notice of termination through diplomatic channels. Notice shall be given at least six months before the end of any calendar year after the expiry of five years from the date the Convention enters into force.

In the event of termination, the Convention shall cease to have effect:

a. in the case of Faroes from 1st January in the calendar year next following that in which notice is given.

b. in the case of the United Kingdom for 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 notice is given. The relevant date for corporation tax is 1st April.

PROTOCOL

The Protocol contains clarificatory material relating to the Articles above and which forms an integral part of the Convention.

Paragraph 1 clarifies that the reason for including the petroleum revenue tax and the supplementary charge in respect of ring fence trades in sub-paragraph (b) of paragraph 3 of Article 2 is solely to permit the Faroes to allow credit for them.

Paragraph 2 clarifies that a resident of a country who is a member of a partnership established in the other country may be taxed in the country in which he is resident on his share of income, profits or gains arising to that partnership.

It also clarifies that where both countries consider that income of a body which is fiscally transparent is derived by a resident of their own country, nothing shall prevent either countries from taxing their own resident.