

EXPLANATORY MEMORANDUM

Title

The Double Taxation Relief (Taxes on Income) (Mauritius) Order 2003.

Legislative Powers

This Order is made under section 788 Income and Corporation Taxes Act 1988 and section 277 Taxation of Chargeable Gains Act 1992.

Affirmative Resolution

This draft Order is subject to affirmative resolution. Further details of the Protocol scheduled to the draft Order are annexed to this memorandum.

European Convention on Human Rights

The Paymaster General (Dawn Primarolo) has confirmed that advice provided to her confirms that the provisions of this draft Order are compatible with the European Convention on Human Rights.

Policy Background to the instrument

This Protocol clarifies the tax treatment of gains from the alienation of property by a person who is treated under the terms of the Convention as a resident of one of the Contracting States at the time that the property is alienated, but who is a resident of the other State at another time. The Inland Revenue has received claims from offshore trustees, under the Double Taxation Convention with Mauritius, that by arranging to be resident in both the UK and Mauritius at different times in the tax year in which they dispose of an asset, they are able to take any resultant chargeable gain out of the charge

to UK tax. The Inland Revenue does not accept that these artificial arrangements are effective. But this Protocol puts the matter completely beyond doubt.

Regulatory Impacts

The provisions of this Protocol neither increase nor reduce the regulatory impact of the Double Taxation Convention it modifies.

Financial Effects

The Protocol is expected to have no revenue impact, but has the effect of protecting the Exchequer.

Extent

The draft Order applies to the whole of the United Kingdom of Great Britain and Northern Ireland.

NOTES ON DETAILS

ARTICLE 1 – CAPITAL GAINS

This Article replaces Paragraph 5 of Article 13 of the Convention. It provides that other Paragraphs of that Article shall not prevent a Contracting State from levying, according to its law, a tax on gains from the alienation of any property on a person who is a resident of that State at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding the fiscal year in which the property is alienated.

ARTICLE 2 – ENTRY INTO FORCE

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

It provides that each country will notify the other that it has completed the procedures required by its law to bring the Protocol into force. The Protocol will enter into force on the date of the later of these notifications.

Sub-paragraph (a) provides that the Protocol shall have effect in the United Kingdom in respect of income tax and capital gains tax for any year of assessment beginning on or after 6 April 2003 and for corporation tax for any financial year beginning on or after 1 April 2003.

Sub-paragraph (b) provides that the Protocol shall have effect in Mauritius in respect of income tax for any year of assessment beginning on or after 1 July

2003 and for capital gains tax (morcellement) for any financial year beginning on or after 1 July 2003.

ARTICLE 3 – LIFE OF THE PROTOCOL

This Article confirms that the Protocol shall remain in force as long as the Convention remains in force.