

STATES OF JERSEY



RATIFICATION OF THE AGREEMENT ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE GOVERNMENT OF JERSEY AND THE GOVERNMENT OF ROMANIA

**Lodged au Greffe on 22nd December 2014
by the Minister for External Relations**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to ratify the Agreement between the Government of Jersey and the Government of Romania for the exchange of information relating to tax matters, as set out in Appendix 1 to the report of the Minister for External Relations dated 15th December 2014.

MINISTER FOR EXTERNAL RELATIONS

REPORT

Background

1. In February 2002, Jersey entered into a political commitment to support the OECD tax initiative on transparency and information exchange, through the negotiation of Tax Information Exchange Agreements to an agreed international standard.
2. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which over 120 jurisdictions are now members, agreed a peer review process to assess compliance with the international standard.
3. Successive G20 summits have encouraged jurisdictions to make progress in agreeing, implementing and abiding by the necessary international Agreements for information exchange. In response, Jersey has maintained an active programme of negotiating Agreements with EU, OECD and G20 member jurisdictions. This has served to enhance the Island's international personality, and generally has helped to engender a more favorable view of the Island amongst the international community.
4. The international tax information exchange standard can be met bilaterally by either a Tax Information Exchange Agreement (TIEA) or a Double Taxation Agreement (DTA). In addition, the standard can be met by becoming party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The advantage of a DTA is that it offers benefits to individuals and the business community through the avoidance of double taxation or reduced rates of withholding tax, in addition to providing for exchange of information to the international standard. However, the majority of jurisdictions with whom the Island has sought to negotiate an Agreement have not been prepared to consider a DTA on the grounds that they would derive little, if any, benefit from such an Agreement because Jersey is a zero-tax jurisdiction.
5. The latest position in respect of the programme of negotiating Tax Agreements is attached as **Appendix 2** to this report. A total of 36 TIEAs and 8 DTAs have now been signed, of which 30 TIEAs and 8 DTAs are in force. Almost without exception, the delay in bringing Agreements into force is due to the length of time taken by the other parties to the Agreements to complete their domestic procedures for the ratification of the Agreements. In addition, there are 15 jurisdictions with whom Jersey does not have a bilateral TIEA or DTA, but who are party to the Multilateral Convention which Jersey joined on 1st June 2014.
6. Jersey has attached particular importance to entering into Agreements with the EU, OECD and G20 member jurisdictions. Agreements have been signed, or negotiations have been completed or are well advanced, with 27 of the 28 EU member states, 33 of the 34 OECD members, and 17 of the 19 G20 countries (the 20th member of the G20 is the European Union).
7. Jersey is party to the Peer Review process of assessment of compliance with the international standards, and a report of the assessment of Jersey was published at the end of October 2011. The review concluded that Jersey's

domestic Laws provide a satisfactory framework for the exchange of relevant information. The assessors said “overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible ... Jersey practices to date have demonstrated a responsive and co-operative approach”. In November 2013, the Global Forum announced the compliance ratings of 50 jurisdictions based on their previous assessments. Jersey was rated as largely compliant, the same rating as the United Kingdom and the USA.

The Agreement with the Government of Romania

8. The Agreement entered into with the Government of Romania (“the Agreement”) is a continuation of the ongoing programme of entering into Tax Agreements to the international standard with EU, OECD and G20 member jurisdictions. Romania is a member of the EU.
9. The Agreement is attached as **Appendix 1** to this report. The Agreement is in line with the OECD Model TIEA, and provides for the exchange of information on tax matters on request. It is consistent with Agreements signed previously with other jurisdictions, which the States have ratified.
10. Great importance is attached to maintaining a good relationship with the EU Member States, and this Agreement is seen as a significant further strengthening of that relationship which will help to facilitate greater market access.

Procedure for signing and ratifying the Agreement

11. The signing of the Agreement was undertaken by the Minister for External Relations in London at the Romanian Embassy on 1st December 2014. The signing was in accordance with the provisions of Article 18(2) of the States of Jersey Law 2005 and paragraph 1.8.5 of the Strategic Plan 2006 – 2011 adopted by the States on 28th June 2006. The Council of Ministers has authorised the Chief Minister, in concurrence with the Minister for External Relations, to sign on behalf of the Government of Jersey.
12. The Agreement is now being presented to the States for ratification, following which it will be published and entered into the official record. The Agreement will enter into force when the domestic procedures of both parties have been completed.
13. The States, on 29th January 2008, adopted the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. The Schedule to these Regulations lists the third countries, and includes the taxes covered by the Agreements being entered into. The necessary amending Regulations to provide for the inclusion in that Schedule of Romania, and the relevant taxes covered, are being lodged “au Greffe” as P.179/2014, on the same date as this Projet.

Financial and manpower implications

14. There are no implications expected for the financial or manpower resources of the States arising from the ratification and implementation of the Agreement.

15th December 2014

APPENDIX 1

**AGREEMENT BETWEEN
THE GOVERNMENT OF JERSEY
AND
THE GOVERNMENT OF ROMANIA
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

Whereas the Government of Jersey and the Government of Romania (hereinafter referred to as "the Parties") wish to enhance and facilitate the exchange of information relating to taxes,

Whereas it is acknowledged that the Government of Jersey has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of Romania,

Now, therefore, the Parties have agreed to conclude the following agreement which contains obligations on the part of the Parties only:

Article 1

Object and Scope of the Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement of every kind and description imposed on behalf of the Parties. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons or obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the laws of the Parties.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined, the term:
 - a) "Romania" means the state territory of Romania, including its territorial sea and air space above them, over which Romania exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which Romania exercises sovereign rights and jurisdiction, in accordance with its legislation and with the rules and principles of international law;
 - b) "Jersey" means the Bailiwick of Jersey, including the territorial sea;
 - c) "competent authority" means:
 - i) in the case of Romania, the Minister of Public Finance or his authorized representative;
 - ii) in the case of Jersey, the Treasury and Resources Minister or his authorized representative;
 - d) "person" includes an individual, a company and any other body of persons;
 - e) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - g) "principal class of shares" means the class or classes of shares representing a majority of the voting rights and value of the company;

(Article 4 contd.)

- h) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- i) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- j) "tax" means any tax to which this Agreement applies;
- k) "requesting Party" means the Party requesting information;
- l) "requested Party" means the Party requested to provide information;
- m) "information gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- n) "information" means any fact, statement, document or other record in any form whatever;
- o) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- p) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

(Article 4 contd.)

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred on the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulties.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all appropriate information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authorities for the purposes specified in Article 1 and in accordance with Article 2 of this Agreement, have the authority to obtain and provide upon request:
 - a) information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity including nominees and trustees;

(Article 5 contd.)

- b) i) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain;
- ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
- iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
- iv) in the case of collective investment funds or schemes, information on shares, units and other interests;

provided that this Agreement does not create an obligation on either Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the requesting Party shall provide in writing the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- d) the tax purpose for which the information is sought;

(Article 5 contd.)

- e) grounds for believing that the information requested is held by the requested Party or is in the possession or control of a person or obtainable by a person within the jurisdiction of the requested Party;
 - f) to the extent known, the name and address of any person believed to be in the possession or control of, or able to obtain, the requested information;
 - g) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

Article 6

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist where:

- a) the request is not made in conformity with this Agreement;
- b) the requesting Party has not pursued all means available on its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or
- c) the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party.

2. This Agreement shall not impose upon a requested Party any obligation to obtain or provide information which is:

- a) subject to solicitor - client confidentiality, in the case of Romania, or subject to legal privilege, in the case of Jersey; or
- b) subject to any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information that the requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances by the requested Party under this Agreement.

(Article 6 contd.)

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

Article 7

Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information may not be used for any purpose other than the purposes stated in Article 1 without the prior express written consent of the competent authority of the requested Party.
3. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
4. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8

Costs

1. Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party.
2. The competent authority of the requested Party shall, before starting the tax examinations following a request for information and whenever there is a concern about some costs that are expected to be borne by the requesting Party, inform the competent authority of the requesting Party about those costs and their estimated total amount. Upon receiving that information, the competent authority of the requesting Party shall indicate whether it wishes anymore for the competent authority of the requested Party to start or to continue the tax examinations.
3. The competent authorities of the Parties shall consult from time to time with regard to this Article and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party if the costs of providing information with respect to a specific request are expected to be significant.

Article 9

Implementation Legislation

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 10

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the mutual agreement referred to in the previous paragraph, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 8.
3. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution, should this become necessary.

Article 11

Entry into Force

1. This Agreement is subject to ratification in accordance with the laws of the Parties.
2. Each Party shall communicate to the other Party in writing the accomplishment of the ratification procedure. This Agreement shall enter into force on the 60th day from the date of the later of such notifications and it shall have effect:
 - a) for criminal tax matters on that date; and
 - b) for all other matters covered by Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

Article 12

Termination

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate this Agreement by serving a prior notice of termination to the other Party in writing.
2. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of the notice of termination.
3. If this Agreement is terminated, the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done at London this 1st day of December 2011 in duplicate,
in the English and Romanian languages, both texts being equally authentic.

FOR THE GOVERNMENT
OF JERSEY

Philip Baillet

FOR THE GOVERNMENT
OF ROMANIA

[Signature]

STATES OF JERSEY**A. TAX INFORMATION EXCHANGE AGREEMENTS (TIEAs)****1. TIEAs signed (Note: dates in brackets are current best estimates)**

<u>Countries</u>	<u>Date Signed</u>	<u>Ratified by Jersey</u>	<u>Ratified by other Party</u>	<u>Entry into Force</u>
U.S.A.	Nov. 2002	May 2006	Nov. 2002	23rd May 2006
Netherlands	June 2007	Feb. 2008	Dec. 2007	1st March 2008
Germany	July 2008	January 2009	July 2009	28th August 2009
Sweden	October 2008	March 2009	Nov. 2009	23rd Dec. 2009
Norway	October 2008	March 2009	Sep. 2009	7th October 2009
Iceland	October 2008	March 2009	October 2009	3rd Dec. 2009
Finland	October 2008	March 2009	Dec. 2008	3rd August 2009
Denmark	October 2008	March 2009	March 2009	6th June 2009
Greenland	October 2008	March 2009	March 2009	6th June 2009
Faroes	October 2008	March 2009	June 2009	21st August 2009
U.K.	March 2009	July 2009	Nov. 2009	27th Nov. 2009
France	March 2009	July 2009	July 2010	11th October 2010
Ireland	March 2009	July 2009	April 2010	5th May 2010
Australia	June 2009	Nov. 2009	January 2010	5th January 2010
New Zealand	July 2009	Nov. 2009	Sep. 2010	27th October 2010
Portugal	July 2010	Sep. 2010	March 2011	9th Nov. 2011
People's Republic of China	October 2010	January 2011	October 2011	10th Nov. 2011
Turkey	Nov. 2010	Feb. 2011	August 2013	11th Sep. 2013
Mexico	Nov. 2010	Feb. 2011	Feb. 2012	22nd March 2012
Canada	January 2011	March 2011	Dec. 2011	19th Dec. 2011
Indonesia	April 2011	July 2011	(2nd half 2014)	(2nd half 2014)
Czech Republic	July 2011	Nov. 2011	March 2012	14th March 2012
South Africa	July 2011	Nov. 2011	January 2012	29th Feb. 2012
Argentina	July 2011	Sep. 2011	July 2011	9th Dec. 2011
India	Nov. 2011	April 2012	January 2012	8th May 2012
Japan	Dec. 2011	April 2012	June 2013	30th August 2013
Poland	Dec. 2011	April 2012	August 2012	1st Nov. 2012
Italy	March 2012	May 2012	(1st half 2014)	(1st half 2014)
Austria	Sep. 2012	Nov. 2012	March 2013	1st June 2013
Latvia	January 2013	March 2013	Dec. 2013	1st March 2014
Brazil	January 2013	March 2013	(2nd half 2014)	(2nd half 2014)
Switzerland	Sep. 2013	Dec. 2013	October 2014	14th October 2014
Slovenia	Nov. 2013	Feb. 2014	June 2014	24th June 2014
Hungary	January 2014	March 2014	October 2014	(January 2015)
Belgium	March 2014	(June 2014)	(2nd half 2014)	(2nd half 2014)
Romania	Dec. 2014	(Feb. 2015)	(2nd half 2015)	(2nd half 2015)

2. TIEAs initialled or agreed ready for signing:

- Chile
- Republic of Korea
- Spain

3. TIEAs where negotiations are well advanced with a draft Agreement exchanged:

- Bulgaria
- Kenya
- Lithuania
- Slovakia

4. Jurisdictions approached but from whom a formal response is awaited:

- Russia

B. DOUBLE TAXATION AGREEMENTS (DTAs)

1. DTAs signed:

- Malta –
signed January 2010
ratified by Malta February 2010
ratified by Jersey June 2010
in force – 19th July 2010
- Estonia –
signed December 2010
ratified by Jersey March 2011
ratified by Estonia December 2011
in force – 30th December 2011
- Hong Kong China –
signed February 2012
ratified by Jersey May 2012
ratified by Hong Kong June 2013
in force – July 2013
- Qatar –
signed March 2012
ratified by Jersey May 2012
ratified by Qatar November 2012
in force – 22nd November 2012
- Singapore –
signed October 2012
ratified by Jersey January 2013

ratified by Singapore May 2013
in force – 2nd May 2013

- Guernsey –
signed January 2013
ratified by Jersey June 2013
ratified by Guernsey May 2013
in force – 9th July 2013
- Isle of Man –
signed January 2013
ratified by Jersey June 2013
ratified by the Isle of Man May 2013
in force – 10th July 2013
- Luxembourg
signed April 2013
ratified by Jersey July 2013
ratified by Luxembourg July 2014
in force – 5th August 2014

2. DTAs initialled or agreed ready for signing:

- Seychelles

3. Jurisdictions where DTA negotiations have been requested/initiated/draft Agreements have been exchanged:

- Bahrain
- Botswana
- Cyprus
- Ghana
- Lesotho
- Liechtenstein
- Malawi
- Mauritius
- Nigeria
- Rwanda
- Saudi Arabia
- Swaziland
- UAE
- Zambia

4. Jurisdictions with whom Jersey does not have a bilateral TIEA or DTA, but who are party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters (i.e. it is signed and in force) which provides for exchange of information on request on the same basis as the bilateral TIEAs:

- Albania
- Belize
- Colombia
- Costa Rica
- Croatia
- Georgia
- Ghana
- Greece
- Republic of Korea
- Lithuania
- Moldova
- Slovak Republic
- Spain
- Tunisia
- Ukraine

Jersey became a party to the Convention on 1st June 2014. Some jurisdictions with whom TIEA negotiations have been engaged may decide not to progress the latter and rely on the Multilateral Convention. One such jurisdiction is Greece.

5. Jurisdictions with whom Jersey has signed a TIEA or DTA who are also party to the Multilateral Convention (i.e. it is signed and in force):

- Argentina
- Australia
- Austria
- Canada
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Iceland
- India
- Ireland
- Italy
- Japan
- Latvia
- Luxembourg
- Malta
- Mexico
- Netherlands
- New Zealand
- Norway

- Poland
- Romania
- Slovenia
- South Africa
- Sweden
- United Kingdom

Enquiries concerning the above should be directed in the first instance to the Adviser – International Affairs, in the Chief Minister’s Department; tel. 44(0)1534 440414; e-mail: c.powell@gov.je.

Adviser – International Affairs

1st December 2014