

# STATES OF JERSEY



## **RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE GOVERNMENT OF JERSEY AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA**

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**Lodged au Greffe on 30th March 2012  
by the Chief Minister**

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**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 the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as set out in the Appendix to the report of the Chief Minister dated 28th March 2012.

CHIEF MINISTER

## 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 some 110 jurisdictions are now members, agreed a peer review process to assess compliance with the international standard. To oversee this process, a peer review group was set up, chaired by France, with 4 Vice-Chairs from India, Japan, Jersey and Singapore.
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 favourable view of the Island amongst the international community.
4. There are occasions when an approach is received from a jurisdiction that is not an EU, OECD or G20 member, inviting Jersey to enter into the negotiation of a tax information exchange agreement. In accordance with the terms of reference of the peer review process set by the Global Forum, Jersey is required to enter into a tax information exchange agreement with any jurisdiction that considers itself to be a relevant partner. This, together with the views of the finance industry on whether a tax agreement with the jurisdiction concerned would be supportive of business development, are factors taken into account when deciding whether or not the negotiation of an agreement would be justified, and if so what priority to attach to the negotiations.
5. The international tax information exchange standard can be met through either a Tax Information Exchange Agreement (TIEA) or a Double Tax Agreement (DTA). 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.
6. The latest position in respect of the programme of negotiating tax agreements is attached as an Appendix to this Report. A total of 28 TIEAs and 4 DTAs have now been signed, of which 21 TIEAs and 2 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.

7. As a Vice-Chair of the Global Forum Peer Review Group, Jersey has been determined to lead by example, and 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 24 of the 27 EU member states, 32 of the 34 OECD members and 17 of the 19 G20 countries (the 20th member of the G20 is the European Union).
8. 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".

### **The Agreement with the Government of the Hong Kong Special Administrative Region of the People's Republic of China**

9. The Agreement entered into with the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Agreement") is a continuation of the ongoing programme of entering into tax agreements to the international standard.
10. The Agreement is attached as an Appendix to this Report. The Agreement is in line with the OECD Model Tax Convention and provides for the avoidance of double taxation to facilitate exchange of goods and services and movement of capital, technology and people. The Agreement also makes provision for information exchange to the agreed international standard.
11. While the Hong Kong Special Administrative Region is not a member of the G20 in its own right, it is a dependent territory of a G20 member. In addition, Hong Kong is an important financial centre and it is hoped that the signing of the Agreement will prove to be a significant step in the further development of a strong business relationship. It is believed that the Agreement will be of major assistance to the financial services industry, and to business generally, when seeking to take advantage of the many trading and investment opportunities that increasingly are to be found in the Far East, and for which Hong Kong is an important gateway.

### **Procedure for signing and ratifying the Agreement**

12. The Agreement was signed by the Chief Minister 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 authorised the Chief Minister to sign on behalf of the Government of Jersey.

13. 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.
14. The States, on 15th June 2010, adopted the Taxation (Double Taxation) (Jersey) Regulations 2010. The Schedule to these Regulations lists the countries with whom Double Tax Agreements have been entered into. As further Agreements are entered into, the Regulations are amended to include the full agreement in the Schedule. The necessary Regulations to provide for the inclusion in the Schedule of the Agreement with the Government of the Hong Kong Special Administrative Region of the People's Republic of China will be presented to the States for adoption in due course.

**Financial and manpower implications**

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

28th March 2012

## APPENDIX 1

**AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE  
GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

The Government of Jersey and the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

**Article 1**

**Persons Covered**

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

**Article 2**

**Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in the case of the Hong Kong Special Administrative Region,
    - (i) profits tax;
    - (ii) salaries tax; and
    - (iii) property tax;whether or not charged under personal assessment;
  - (b) in the case of Jersey, the income tax.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective taxation laws.
5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Jersey tax", as the context requires.

### **Article 3**

#### **General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) (i) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;
  - (ii) the term "Jersey" means the Bailiwick of Jersey, including its territorial sea;
  - (b) the term "business" includes the performance of professional services and of other activities of an independent character;
  - (c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (d) the term "competent authority" means:
    - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative; and



- (ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
  - (e) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or Jersey, as the context requires;
  - (f) the term "enterprise" applies to the carrying on of any business;
  - (g) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
  - (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
  - (i) the term "person" includes an individual, a company, a trust, a partnership and any other body of persons;
  - (j) the term "tax" means the Hong Kong Special Administrative Region tax or Jersey tax, as the context requires.
2. In the Agreement, the terms "Hong Kong Special Administrative Region tax" and "Jersey tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under Section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.
3. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, 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 4**

#### **Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:
  - (a) in the case of the Hong Kong Special Administrative Region,
    - (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
    - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
    - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
    - (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
  - (b) in the case of Jersey, any person who, under the laws of Jersey, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Jersey in respect only of income from sources in Jersey;
  - (c) in the case of either Contracting Party, the Government of that Party.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
  - (c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode;
  - (d) if he has the right of abode in both Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, the competent authorities of the Parties shall settle the question by mutual agreement having regard to such factors as the place of effective management and the place of incorporation.

#### **Article 5**

#### **Permanent Establishment**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" also encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6**

### **Income from Immovable Property**

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

## **Article 7**

### **Business Profits**

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

**Article 8**  
**Shipping and Air Transport**

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

**Article 9**  
**Associated Enterprises**

1. Where
  - (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or
  - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.



2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

#### **Article 10**

##### **Dividends**

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party and beneficially owned by that resident of the other Party shall be taxable only in that other Party. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
2. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other party.

#### **Article 11**

##### **Interest**

1. Interest arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.
2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **Royalties**

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed four per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.
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, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

#### **Article 13**

##### **Capital Gains**

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:
  - (a) quoted on such stock exchange as may be agreed between the Parties; or
  - (b) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or
  - (c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

#### **Article 14**

##### **Income from Employment**

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
  - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable period concerned, and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
  - (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.
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 Party may be taxed in that Party.

#### **Article 15**

##### **Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

#### **Article 16**

##### **Artistes and Sportsmen**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

## **Article 17**

### **Pensions**

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.
2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:
  - (a) a public scheme which is part of the social security system of a Contracting Party; or
  - (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,shall be taxable only in that Contracting Party.

## **Article 18**

### **Government Service**

1.
  - (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.
  - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:
    - (i) has the right of abode in that Party; or
    - (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.  
  
(b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions (including a lump sum payment), and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

#### **Article 19**

##### **Students**

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

#### **Article 20**

##### **Other Income**

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.



2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
3. Alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

#### **Article 21**

##### **Methods for Elimination of Double Taxation**

1. Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Jersey tax paid under the laws of Jersey and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Jersey, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. In the case of Jersey, double taxation shall be avoided as follows:
  - (a) when imposing tax on its residents Jersey may include in the basis upon which such taxes are imposed the items of income, which, according to the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region; and
  - (b) where a resident of Jersey derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Jersey shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Hong Kong Special Administrative Region. Such deduction in either case shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region.

#### **Article 22**

##### **Non-Discrimination**

1. Persons who have the right of abode in a Contracting Party or are incorporated or otherwise constituted therein shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.
4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## Article 23

### Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.
3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of the Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case may be submitted to arbitration if both competent authorities and the person agree in writing to be bound by the decision of the arbitration board. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case. The procedure shall be established in an exchange of notes between the Parties.

#### **Article 24**

##### **Exchange of Information**

- 1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

**Article 25**

**Members of Government Missions**

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

**Article 26**

**Miscellaneous Rules**

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

**Article 27**

**Entry into Force**

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of the Agreement shall thereupon have effect:
  - (a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force;
  - (b) in Jersey:

in respect of Jersey tax, for any year of assessment beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

**Article 28**  
**Termination**

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

- (b) in Jersey:

in respect of Jersey tax, for any year of assessment beginning on or after 1 January in the calendar year next following that in which the notice is given.



IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate in Jersey and Hong Kong on the *Fifteenth* day of *February* 2012 and the *twenty-second* day of *February* 2012, respectively, in the English language.

For the Government of Jersey



For the Government of  
The Hong Kong Special  
Administrative Region  
of the People's Republic of China



## PROTOCOL

At the time of signing of the Agreement between the Government of Jersey and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("the Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

### With respect to Article 24

It is understood that:

- (a) the Article does not require the Contracting Parties to exchange information on an automatic or a spontaneous basis; and
- (b) a Contracting Party may only request information relating to taxable periods for which the provisions of the Agreement have effect for that Party.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate in Jersey and Hong Kong on the *Fifteenth* day of *February* 2012 and the *twenty-second* day of *February* 2012, respectively, in the English language.

For the Government of Jersey



For the Government of  
The Hong Kong Special  
Administrative Region  
of the People's Republic of China



**STATES OF JERSEY****A. TAX INFORMATION EXCHANGE AGREEMENTS (TIEAs)****1. TIEAs signed:**

<b><u>Countries</u></b>	<b><u>Date Signed</u></b>	<b><u>Ratified by Jersey</u></b>	<b><u>Ratified by other Party</u></b>	<b><u>Entry into Force</u></b>
U.S.A.	Nov. 2002	May 2006	Nov. 2002	23 May 2006
Netherlands	June 2007	Feb. 2008	Dec. 2007	1 March 2008
Germany	July 2008	Jan. 2009	July 2009	28 Aug. 2009
Sweden	Oct. 2008	March 2009	Nov. 2009	23 Dec. 2009
Norway	Oct. 2008	March 2009	Sep. 2009	7 Oct. 2009
Iceland	Oct. 2008	March 2009	Oct. 2009	3 Dec. 2009
Finland	Oct. 2008	March 2009	Dec. 2008	3 Aug. 2009
Denmark	Oct. 2008	March 2009	March 2009	6 June 2009
Greenland	Oct. 2008	March 2009	March 2009	6 June 2009
Faroes	Oct. 2008	March 2009	June 2009	21 Aug. 2009
U.K.	March 2009	July 2009	Nov. 2009	27 Nov. 2009
France	March 2009	July 2009	July 2010	11 Oct. 2010
Ireland	March 2009	July 2009	April 2010	5 May. 2010
Australia	June 2009	Nov. 2009	Jan. 2010	5 Jan. 2010
New Zealand	July 2009	Nov. 2009	Sep. 2010	27 Oct. 2010
Portugal	July 2010	Sep. 2010	March 2011	9 Nov. 2011
People's Republic of China	Oct. 2010	Jan. 2011	Oct. 2011	10 Nov. 2011
Turkey	Nov. 2010	Feb. 2011	(1st half 2012)	(1st half 2012)
Mexico	Nov. 2010	Feb. 2011	Feb. 2012	22 March 2012
Canada	Jan. 2011	March 2011	Dec. 2011	19 Dec. 2012
Indonesia	April 2011	July 2011	(1st half 2012)	(1st half 2012)
Czech Republic	July 2011	Nov. 2011	March 2012	16 March 2012
South Africa	July 2011	Nov. 2011	Jan. 2012	29 Feb. 2012
Argentina	July 2011	Sep. 2011	July 2011	9 Dec. 2011
India	Nov. 2011	(April 2012)	Jan. 2012	(April 2012)
Japan	Dec. 2011	(April 2012)	(1st half 2012)	(1st half 2012)
Poland	Dec. 2011	(April 2012)	(1st half 2012)	(1st half 2012)
Italy	March 2012	(June 2012)	(2nd half 2012)	(2nd half 2012)

**Note: dates in brackets are the expected dates based on latest information from the country concerned.**

2. **TIEAs initialled/agreed ready for signing:**
  - Austria
  - Brazil
  - Greece
  - Republic of Korea
  - Spain
  
3. **TIEAs where negotiations are well advanced with a draft agreement exchanged:**
  - Chile
  - Hungary
  - Kenya
  - Latvia
  - Lithuania
  - Slovakia
  - Slovenia
  
4. **Jurisdictions contacted from which there has been a positive response and/or initial action has been taken:**
  - Romania
  - Switzerland
  
5. **Jurisdictions approached but from whom a formal response is awaited:**
  - EU Member States:
    - Bulgaria
    - Cyprus
  
  - G20 Member States:
    - Russia
    - Saudi Arabia

## **B. DOUBLE TAXATION AGREEMENTS (DTAs)**

### **1. DTAs signed:**

- Malta –  
signed 25th January 2010  
ratified by Malta February 2010  
ratified by Jersey June 2010  
in force – 19th July 2010
  
- Estonia –  
signed 21st December 2010  
ratified by Jersey March 2011  
ratified by Estonia December 2011  
in force – 30th December 2011
  
- Hong Kong China –  
signed February 2012
  
- Qatar  
signed March 2012

### **2. DTAs initialled/agreed ready for signing:**

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### **3. DTAs where negotiations have been initiated/draft agreements have been exchanged:**

- Bahrain
- Belgium
- Luxembourg
- Singapore

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

**Adviser – International Affairs  
27th March 2012**