

STATES OF JERSEY



RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE SWISS FEDERAL COUNCIL FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS

**Lodged au Greffe on 28th October 2013
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 Swiss Federal Council for the Exchange of Information on Tax Matters, as set out in Appendix 1 to the report of the Minister for External Relations dated 14th October 2013.

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 some 120 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. The international tax information exchange standard can be met through either a Tax Information Exchange Agreement (TIEA) or a Double Taxation 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.
5. The latest position in respect of the programme of negotiating tax agreements is attached as Appendix 2 to this report. A total of 32 TIEAs and 8 DTAs have now been signed, of which 27 TIEAs and 7 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.
6. 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 26 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”.

The Agreement with the Swiss Federal Council

8. The Agreement entered into with the Swiss Federal Council (“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. Switzerland is a member of the OECD.
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 and which the States have ratified.
10. Jersey and Switzerland have a great deal in common as international finance centres, and the Agreement will serve to strengthen what is already an important business relationship.

Procedure for signing and ratifying the Agreement

11. The Jersey signing of the Agreement was undertaken by the Chief Minister in London in the presence of the Swiss Ambassador on 16th September 2013. 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 to 2011 adopted by the States on 27th June 2006. The Council of Ministers has authorized the Chief Minister 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 Regulations to provide for the inclusion in the Schedule of the Swiss Federal Council, and the relevant taxes covered, are being presented to the States separately for adoption.

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.

14th October 2013

**AGREEMENT BETWEEN JERSEY AND THE SWISS CONFEDERATION FOR THE
EXCHANGE OF INFORMATION ON TAX MATTERS**

Whereas the Government of Jersey and the Swiss Federal Council 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 of Great Britain and Northern Ireland to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Swiss Confederation;

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

**Article 1
Object and Scope of the Agreement**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.
2. 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.
3. 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.
4. 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 delay or prevent effective exchange of information.

**Article 2
Jurisdiction**

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

**Article 3
Taxes Covered**

1. The taxes which are the subject of this Agreement are:
 - a) in Switzerland,
 - i) the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income);
 - ii) the federal, cantonal and communal taxes on capital;
 - iii) the cantonal and communal inheritance and gift taxes;
 - b) in Jersey,
 - i) the income tax.
2. This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other in writing of any substantial changes in their laws which may affect their obligations pursuant to this Agreement.

**Article 4
Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term "Contracting Party" means Switzerland or Jersey as the context requires; "Switzerland" means the territory of the Swiss Confederation as defined by its laws in accordance with international law; "Jersey" means the Bailiwick of Jersey, including the territorial sea, in accordance with international law;
 - b) the term "competent authority" means,
 - i) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;
 - ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
 - c) the term "person" includes an individual, a company and any other body of persons;
 - d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- e) the term "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;
- f) the term "principal class of shares" means the class or classes of shares representing a majority of the capital or of the voting power of the company;
- g) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- h) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of its 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;
- i) the term "tax" means any tax to which the Agreement applies;
- j) the term "requesting Party" means the Contracting Party requesting information;
- k) the term "requested Party" means the Contracting Party requested to provide information;
- l) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information; and
- m) the term "information" means any fact, statement or record in any form whatever.

2. As regards the application of this 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, 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 conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in 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 within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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, that Party shall use all relevant information gathering measures 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 Contracting 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;
- b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties 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 the 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 of time for which the information is requested;
- c) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
- d) the tax purpose for which the information is sought;
- e) grounds for believing that the information requested is held in the requested Party or is in the possession or control of 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 possession of the requested information;
- g) a statement that the request is in conformity with the law 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 forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6 Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for the purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

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

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 or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

Article 7 Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the

jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested Party. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

**Article 8
Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

**Article 9
Implementation Legislation**

The Contracting 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 Contracting 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 agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 8.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

**Article 11
Entry into Force**

1. Each Contracting Party shall notify the other, in writing, of the completion of the procedures required by its law for the bringing into force of this Agreement.
2. This Agreement shall enter into force on the date on which the later of those notifications has been received.

3. The provisions of this Agreement shall have effect for requests made on or after the date of entry into force of the Agreement for information that relates to any taxable period beginning on or after the first day of January of the calendar year following the entry into force of the Agreement or, where there is no taxable period, for all charges to tax arising on or after the first day of January of the calendar year following the entry into force of the Agreement.

**Article 12
Termination**

1. Either Contracting Party may terminate this Agreement by serving a notice of termination, in writing, to the competent authority of the other Contracting Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If this Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under the Agreement.

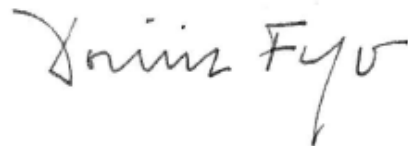
In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.

Done in duplicate at London on 16th September 2013
in the English and French languages, both texts being equally authentic.

For the Government of Jersey



For the Swiss Federal Council:



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

<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 2013)	(2nd half 2013)
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	(2nd half 2013)	(2nd half 2013)
Brazil	January 2013	March 2013	(2nd half 2013)	(2nd half 2013)
Switzerland	Sep. 2013	(Jan. 2014)	(1st half 2014)	(1st half 2014)

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

2. TIEAs initialled or agreed ready for signing:

- Belgium
- Chile
- Greece
- Republic of Korea
- Slovenia
- Spain

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

- Bulgaria
- Hungary
- Kenya
- Lithuania
- Romania
- Slovakia

4. Jurisdictions contacted from which there has been a positive response and/or initial action has been taken:

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

- G20 Member States:
 - 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

2. DTAs initialled or agreed ready for signing:

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

- Bahrain
- Cyprus
- Mauritius
- Saudi Arabia
- Seychelles
- UAE

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
16th October 2013**