

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 CANADA

Lodged au Greffe on 24th January 2011
by the Chief Minister

STATES GREFFE

PROPOSITION

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

to ratify the Agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of Canada as set out in the Appendix to the Report of the Chief Minister dated 12th January 2011.

CHIEF MINISTER

REPORT

Agreement to be entered into with Canada for the exchange of information relating to tax matters

1. The States are asked to ratify the signed Agreement to be entered into with Canada for the exchange of information relating to tax matters attached as Appendix 1 to this report.

Background

2. In February 2002, Jersey entered into a political commitment to support the OECD's tax initiative on transparency and information exchange through the negotiation of tax information exchange agreements with each of the OECD Member States.
3. In April 2009, following the G20 Summit in London, the OECD published a progress report on the jurisdictions implementing the internationally agreed tax standards of transparency and information exchange. Jersey was included in the list of jurisdictions that have substantially implemented the internationally agreed tax standard – what has become known as the “white list” – alongside countries such as the United Kingdom, the United States, Jersey, France, Japan, etc.
4. Since April 2009, subsequent G20 Summits have encouraged further progress in agreeing, implementing and abiding by the necessary international agreements. Since early 2009, over 500 agreements have been signed, where previously only some 45 agreements had been entered into that complied with the current internationally agreed tax standards.
5. To be included on the OECD “white list” in April 2009, Jersey needed to have signed 12 tax information exchange agreements (TIEAs) that met the international standards. Since that date, further agreements have been signed or have been negotiated to the point where they are ready for signing. The latest position in respect of the overall programme of TIEA negotiations is attached as Appendix 2 to this report.
6. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which over 90 jurisdictions are members, established a peer review process to assess compliance with the international standards. To oversee this process, a Peer Review Group has been set up, chaired by France with 4 vice-chairs from India, Japan, Singapore and Jersey.
7. The Peer Review process is made up of 2 phases. Phase 1 is concerned with an assessment of the Laws and Regulations in place, and involves an assessment of whether these are sufficient to meet the international standards. All of the Global Forum members will be assessed in this respect over a 3 year period from March 2010. Phase 2 is concerned with assessing the effectiveness with which the standards are being applied. A number of countries, of which Jersey is one, have volunteered to be assessed for both Phase 1 and Phase 2 within the first 3 year period. An onsite visit took place at the beginning of June with assessors from the Global Forum Secretariat,

Denmark and Bermuda, and a draft report on the assessment was considered by the Peer Review Group at the end of November. The draft report, which remains confidential, will be considered by the Global Forum at its meeting at the end of May 2011, and if adopted it will then be published.

The Agreement with Canada

8. The tax information exchange agreement entered into with Canada is the 20th such agreement signed and is a continuation of the ongoing programme of signing TIEAs or DTAs with all OECD and G20 member countries. The programme is serving to enhance the Island's international personality and generally is helping to engender a more favourable view of the Island amongst the international community. Canada is a G20 member, and with the signing of this agreement Jersey will have signed with 9, and initialled or completed negotiations with a further 7 of the 19 G20 countries.
9. Attached as Appendix 1 to this report is the tax information exchange agreement which is consistent with agreements signed previously with other countries. The agreement provides for the exchange of information on tax matters on request. However, that request has to be formulated in writing in the greatest detail possible. There can be no "fishing expeditions". The agreement will come into force once the parties to the agreement have ratified it, and any necessary legislative steps have been taken.
10. In the negotiation of all the TIEAs signed and ratified to-date, the Council of Ministers has had regard for the views of industry which are very supportive of the programme of TIEA/DTA negotiations in which the Council of Ministers is engaged. The Agreement with Canada is an important step in the further development of the established relationship with Canada and Canadian businesses that is seen by industry as a continuing significant source of business for the Island.

Procedure for Signing and Ratifying the TIEA

11. The Agreement with Canada was signed by the Chief Minister on 12th January 2011 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 Agreement is now being presented to the States for ratification, following which it will be published, entered into the official record and Regulations will be made for the Agreement to enter into force when the domestic procedures of both parties have been completed.
12. 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. As further agreements are entered into, the Regulations need to be amended to include in the Schedule the jurisdiction and the taxes concerned. The necessary Regulations to provide for the inclusion in the Schedule of Canada and the relevant taxes will be presented to the States for adoption in due course, subsequent to the ratification of the Agreement.

Financial and manpower implications

13. There are no implications for the financial or manpower resources of the States arising from the ratification and implementation of the agreement with Canada.

13th January 2011

AGREEMENT

BETWEEN

THE GOVERNMENT OF JERSEY,

UNDER ENTRUSTMENT FROM

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN

AND NORTHERN IRELAND,

AND

THE GOVERNMENT OF CANADA

FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

WHEREAS the **GOVERNMENT OF JERSEY** (Jersey) and the **GOVERNMENT OF CANADA** (Canada) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to tax matters,

WHEREAS the Government of the United Kingdom has issued a letter of entrustment to the Government of Jersey to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada,

NOW, THEREFORE, Jersey and Canada ("the Parties") have agreed as follows:

ARTICLE 1

Object and Scope of this Agreement

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 the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement and collection of tax with respect to persons subject to such taxes, the investigation of tax matters or the prosecution of tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction. 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

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Canada, taxes on income or capital imposed or administered by the Government of Canada;
 - (b) in the case of Jersey, taxes on income and the goods and services tax.
2. This Agreement shall apply also to any identical taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree in an exchange of letters. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3

Definitions

1. In this Agreement:
 - (a) "Canada", used in a geographical sense, means:
 - (i) the land territory, air space, internal waters and territorial sea of Canada;
 - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and

- (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
- (b) “Jersey” means the Bailiwick of Jersey, including its territorial sea;
- (c) “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 and sold, or readily purchased and 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;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means:
 - (i) in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative;
 - (ii) in the case of Jersey, the Treasury and Resources Minister or the Minister’s authorised representative;
- (f) “information” means any fact, statement, document or record in whatever form;
- (g) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

- (h) "person" includes a natural person, a company, a trust, a partnership or any other body or group of persons;
- (i) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (j) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased and 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;
- (k) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (l) "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (n) "tax" means any tax covered by this Agreement.

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 4

Exchange of Information upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party 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 it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall make a request for information pursuant to this Article only when it is unable to obtain the requested information by other means, 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, the requested Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, 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 it has the authority, for the purposes specified in Article 1, to obtain and provide, through its competent authority and upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b)(i) information regarding the legal and beneficial ownership of companies, partnerships, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain and in the case of collective investment schemes, information on shares, units and other interests;

(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;

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

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- (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;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is held in the territory of the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;

- (h) 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; and
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request of 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 possible delay.

ARTICLE 5

Tax Investigations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

ARTICLE 6

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where 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 provide documents or records which are:
 - (a) in the case of Jersey, subject to legal privilege, or in the case of Canada, subject to solicitor-client privilege;
 - (b) subject to any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, 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 which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

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

1. All information provided and received by the competent authorities of the Parties shall be treated as confidential.

2. Such information may 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.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Party.

4. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 8

Costs

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 incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities 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 in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 9

Other International Agreements or Arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Parties which relate to co-operation in tax matters.

ARTICLE 10

Implementation Legislation

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

ARTICLE 11

Mutual Agreement Procedures

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 agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.

3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. The Parties shall agree on other forms of dispute resolution should this become necessary.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the date of the later written notification by which each Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), on that date; and
- (b) for all other matters covered in 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, all charges to tax arising on or after that date.

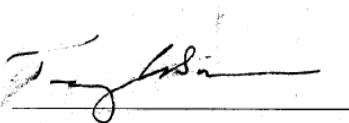
ARTICLE 13

Termination

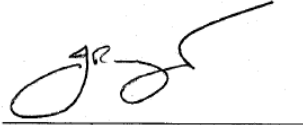
1. This Agreement shall remain in force until terminated by a Party.
2. A Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of the notice of termination. 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 Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised in thereto by the respective Parties, have signed this Agreement.

DONE in duplicate at *St Helier*, this *12th* day of *January* 2011,
in the English and French languages, each version being equally authentic.



**FOR THE GOVERNMENT
OF JERSEY**



**FOR THE GOVERNMENT
OF CANADA**

STATES OF JERSEYA. 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.	November 2002	May 2006	November 2002	23rd May 2006
Netherlands	June 2007	February 2008	December 2007	1st March 2008
Germany	July 2008	January 2009	July 2009	28th August 2009
Sweden	October 2008	March 2009	November 2009	23rd December 2009
Norway	October 2008	March 2009	September 2009	7th October 2009
Iceland	October 2008	March 2009	October 2009	3rd December 2009
Finland	October 2008	March 2009	December 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	November 2009	27th November 2009
France	March 2009	July 2009	July 2010	11th October 2010
Ireland	March 2009	July 2009	April 2010	5th May 2010
Australia	June 2009	November 2009	January 2010	5th January 2010
New Zealand	July 2009	November 2009	September 2010	27th October 2010
Portugal	July 2010	September 2010	(1st half 2011)	(1st half 2011)
People's Republic of China	October 2010	(January 2011)	(1st half 2011)	(1st half 2011)
Turkey	November 2010	(February 2011)	(1st half 2011)	(1st half 2011)
Mexico	November 2010	(February 2011)	(1st half 2011)	(1st half 2011)
Canada	January 2011	(March 2011)	(1st half 2011)	(1st half 2011)

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

2. TIEAs initialled/agreed ready for signing:

- Argentina
- Brazil
- Indonesia
- India
- Italy
- Republic of Korea
- South Africa

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

- Czech Republic
- Greece
- Japan
- Poland
- Spain

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

- Hungary
- Luxembourg
- Russia
- Switzerland

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

- OECD Member States:
 - Austria
 - Slovak Republic
- G20 Member States:
 - 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

2. DTAs where negotiations are well advanced:

- Bahrain
- Belgium
- Qatar

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

13th January 2011