

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 CZECH REPUBLIC

**Lodged au Greffe on 11th August 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 the Czech Republic as set out in the Appendix to the Report of the Chief Minister dated 9th August 2011.

CHIEF MINISTER

REPORT

Agreement to be entered into with the Czech Republic for the exchange of information on tax matters

1. The States are asked to ratify the signed Agreement to be entered into with the Czech Republic for the exchange of information on tax matters attached as an Appendix 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 to an agreed international standard.
3. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which more than 100 jurisdictions are 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, Singapore and Jersey.
4. 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.
5. The latest position in respect of the programme of negotiating tax information exchange agreements is attached as an Appendix to this report. A total of 23 tax information exchange agreements (TIEAs) and 2 double taxation agreements (DTAs) have now been signed, of which 15 TIEAs and one DTA are in force. 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 on tax information exchange with EU and G20 members. Jersey has signed, initialled or completed the negotiation of an agreement with 15 EU Member States. Negotiations are actively underway with 6 more, and the remaining 6 have been invited to commence negotiations. Jersey has also now signed, initialled or completed negotiation with 17 of the 19 G20 countries (the other member of the G20 is the European Union).
7. Jersey has been party to the peer review process to assess compliance with international standards, and a report on the assessment of Jersey is due to be published shortly.

8. The policy of negotiating TIEAs or DTAs is supported by the finance industry. The preference of government and the industry is for a DTA but the majority of jurisdictions with whom negotiations have been undertaken have not been prepared to consider a DTA on the grounds that they believe they would derive little if any benefit from such an agreement.

The Agreement with the Czech Republic

9. The Tax Information Exchange Agreement entered into with the Czech Republic is a continuation of the ongoing programme of signing TIEAs or DTAs with EU Member countries.
10. Attached as an Appendix to this report is –
 - (a) the Tax Information Exchange Agreement, which is consistent with agreements signed previously with other countries and which the States have ratified. The Agreement provides for the exchange of information on tax matters on request. The Agreement will come into force once both parties to the Agreement have ratified it, and any necessary legislative steps have been taken;
 - (b) a Protocol is attached as an Annex to the Agreement concerning the interpretation or application of the Agreement particularly in respect of the allocation of costs.

Procedure for Signing and Ratifying the TIEA

11. The Agreement with the Czech Republic was signed by the Assistant Chief Minister, UK and International Relations, on the 12th July, 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 the 28th June, 2006. The Council of Ministers authorised the Assistant 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. In due course regulations will be made for the Agreement to enter into force when the domestic procedures of both parties have been completed.
13. The States, on the 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 are amended to include in the Schedule the jurisdiction and the taxes concerned. The necessary regulations to provide for the inclusion in the schedule of the Czech Republic and the relevant taxes will be presented to the States for adoption on due course subsequent to the ratification of the Agreement.

Financial and manpower implications

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

9th August 2011

AGREEMENT BETWEEN THE
GOVERNMENT OF JERSEY
AND THE
GOVERNMENT OF THE CZECH REPUBLIC
FOR THE EXCHANGE OF INFORMATION
ON TAX MATTERS

Whereas the Government of Jersey and the Government of the Czech Republic ("the Contracting Parties") desire to facilitate the exchange of information with respect to tax matters;

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 and perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of the Czech Republic;

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

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. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

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

Article 3
Taxes Covered

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

Article 4
General definitions

1. For the purposes of this Agreement, unless otherwise defined the term:

- a) "Contracting Party" means the Czech Republic or Jersey as the context requires;
- b) "competent authority" means
 - i) in the case of the Czech Republic, the Minister of Finance or his authorised representative
 - ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
- c) "person" includes a natural person, legal person and any other body or group of persons;
- d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) "publicly traded company" means any company whose principal class of shares is listed on a recognized 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) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- g) "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- h) "collective investment fund or scheme" means any pooled investment instrument, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) "tax" means any tax to which the Agreement applies;
- j) "requesting Party" means the Contracting Party requesting information;
- k) "requested Party" means the Contracting Party requested to provide information;
- l) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) "information" means any fact, statement or record in any form whatever;
- n) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- o) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

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 for the purposes of taxes to which the Agreement applies, any meaning under the applicable tax law 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 requesting Party shall have pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all appropriate information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the 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) (i) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;
(ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
(iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Provided that 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 to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) 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;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or in the control of or obtainable by a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of or in the control of or able to obtain the requested information;
- (f) 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;
- (g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavors to forward the requested information to the requesting Party with the least reasonable delay.

Article 6 Tax Examinations Abroad

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7 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 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 as provided for under the domestic law of the relevant Contracting Party 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.

4. A request for information shall not be refused on the grounds 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 of the requested Party as compared with a national of the requesting Party in the same circumstances.

Article 8 Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties should be kept confidential.

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

3. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

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

Article 9 Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. 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 if the costs of providing information with respect to a specific request are expected to be significant.

Article 10 Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 11
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 Contracting Parties which relate to the co-operation in tax matters.

Article 12
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the 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, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreements under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 13
Protocol

The attached Annex contains an explanatory Protocol to the Agreement and shall be an integral part of this Agreement.

Article 14
Entry into force

Each of the Contracting Parties shall notify the other, in writing, of the completion of the procedures required by its domestic law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 in respect of any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 15
Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, by giving written notice of termination. In

such event, the Agreement shall cease to have effect in both Contracting Parties on 1st January in the calendar year next following that in which the notice is given.

2. The Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

Done in duplicate at *London* this *12th* day of *July* 20*11*, in the Czech and English languages, each text being equally authentic.

For the Government of Jersey



For the Government of the Czech Republic



ANNEX

PROTOCOL
TO THE AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE
GOVERNMENT OF THE CZECH REPUBLIC FOR EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS

1. With respect to paragraph 6 of Article 5 (*Exchange of Information Upon Request*) of the Agreement, it is understood that 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.

2. With respect to Article 9 (Costs) it is understood that:

- a) The term "ordinary costs" includes, but is not limited to, ordinary administrative, postal and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.
- b) The term "extraordinary costs" includes, but is not limited to:
 - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the requesting Party;
 - (ii) reasonable fees charged by a financial institution or other third party record keeper for copying records and research related to a specific request for information;
 - (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;
 - (iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in the Czech Republic or in Jersey for an interview, deposition or testimony relating to a particular information request;
 - (v) reasonable legal fees for non-government counsel appointed or retained, with the approval of the competent authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;
- c) If the extraordinary costs pertaining to a specific request are expected to exceed 500

EUR or the equivalent in British Pounds, the competent authority of the requested Party will contact the competent authority of the requesting Party to determine whether the requesting Party wants to pursue the request.

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>
USA	Nov. 2002	May 2006	Nov. 2002	23rd May 2006
Netherlands	June 2007	Feb. 2008	Dec. 2007	1st March 2008
Germany	July 2008	Jan. 2009	July 2009	28th Aug. 2009
Sweden	Oct. 2008	March 2009	Nov. 2009	23rd Dec. 2009
Norway	Oct. 2008	March 2009	Sept. 2009	7th Oct. 2009
Iceland	Oct. 2008	March 2009	Oct. 2009	3rd Dec. 2009
Finland	Oct. 2008	March 2009	Dec. 2008	3rd Aug. 2009
Denmark	Oct. 2008	March 2009	March 2009	6th June 2009
Greenland	Oct. 2008	March 2009	March 2009	6th June 2009
Faroese	Oct. 2008	March 2009	June 2009	21st Aug. 2009
U.K.	March 2009	July 2009	Nov 2009	27nd Nov. 2009
France	March 2009	July 2009	July 2010	11th Oct. 2010
Ireland	March 2009	July 2009	April 2010	5th May 2010
Australia	June 2009	Nov. 2009	January 2010	5th Jan. 2010
New Zealand	July 2009	Nov. 2009	Sept. 2010	27nd Oct. 2010
Portugal	July 2010	Sept. 2010	March 2011	(2nd Half 2011)
People's Republic of China	Oct. 2010	Jan 2011	(2nd Half 2011)	(2nd Half 2011)
Turkey	Nov. 2010	Feb. 2011	(2nd Half 2011)	(2nd Half 2011)
Mexico	Nov. 2010	Feb. 2011	(2nd Half 2011)	(2nd Half 2011)
Canada	Jan. 2011	March 2011	(2nd Half 2011)	(2nd Half 2011)
Indonesia	April 2011	(July 2011)	(2nd Half 2011)	(2nd Half 2011)
Czech Republic	July 2011	(Sept. 2011)	(2nd Half 2011)	(2nd Half 2011)
South Africa	July 2011	(Sept. 2011)	(2nd Half 2011)	(2nd Half 2011)
Argentina	July 2011	(Sept. 2011)	July 2011	(2nd 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:

- Brazil
- Greece
- India
- Italy
- Japan
- Poland
- Republic of Korea

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

- Hungary
- Spain

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

- Austria
- Luxembourg
- Hong Kong China
- Slovenia
- Switzerland

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

- EU Member States:
 - Bulgaria
 - Cyprus
 - Latvia
 - Lithuania
 - Romania
 - 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
ratified by Jersey March 2011

2. DTAs where negotiations have commenced:

- Bahrain
- Belgium
- Qatar

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

**Colin Powell
Adviser – International Affairs**

29th July 2011