

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 REPUBLIC OF SOUTH AFRICA

**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 Republic of South Africa 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 Republic of South Africa for the exchange of information with respect to taxes

1. The States are asked to ratify the signed Agreement to be entered into with the Republic of South Africa for the exchange of information with respect to taxes 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 G20 countries. Jersey has 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 Republic of South Africa

9. The Tax Information Exchange Agreement entered into with the Republic of South Africa is a continuation of the ongoing programme of signing tax agreements with G20 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) the Joint Declaration by Jersey and South Africa recognising each other's commitment to operate financial regulatory systems that meet the highest international standards in order to combat money laundering, terrorist financing and other financial and fiscal crimes. The Declaration also refers to the broadening of the political and economic relationship between South Africa and Jersey, signalled by the Agreements signed, as an ongoing process.

Procedure for Signing and Ratifying the TIEA

11. The Agreement with the Republic of South Africa 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 Republic of South Africa 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 Republic of South Africa.

9th August 2011

AGREEMENT

BETWEEN

THE GOVERNMENT OF JERSEY

AND

**THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE EXCHANGE OF INFORMATION
WITH RESPECT TO TAXES**

PREAMBLE

WHEREAS the Government of Jersey and the Government of the Republic of South Africa ("the Parties") recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

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

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, therefore, the Parties in concluding the following Agreement which contains obligations on the part of the Parties only:

HAVE AGREED AS FOLLOWS:

ARTICLE 1

SCOPE OF THE AGREEMENT

The Parties through their competent authorities 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 or collection of such taxes, with respect to persons liable to such taxes, or to the investigation or the prosecution of civil or criminal 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 the 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 Jersey:
 - (i) the income tax; and
 - (ii) the goods and services tax; and
 - (b) in the case of South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies;
 - (iii) the withholding tax on royalties;
 - (iv) the tax on foreign entertainers and sportspersons; and
 - (v) the value added tax.
2. This Agreement shall apply also 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 Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws or measures which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement:
 - (a) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;
 - (b) the term "Jersey" means the Bailiwick of Jersey, including its territorial sea;
 - (c) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “competent authority” means:
 - (i) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner; and
 - (ii) in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister;
- (f) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such laws are contained in the tax laws, the criminal code or other statutes;
- (g) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal law of the requesting Party;
- (h) the term “information” means any fact, statement, document or record in whatever form;
- (i) the term “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (j) the term “person” includes an individual, a company or any other body or group of persons;
- (k) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) 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;
- (m) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (n) the term “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) the term “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party; and

- (p) the term "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 competent authority of 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 only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate 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 at its own discretion the information gathering measure it considers relevant to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that it has the authority, subject to the terms of 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) information regarding the legal and beneficial ownership of companies, partnerships and other persons and any other persons in an ownership chain, including:
 - (i) 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; and

- (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.
5. 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.
 6. Any request for information shall be formulated with the greatest detail necessary 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 present in 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 or able to obtain the information requested;
 - (h) a statement that the request conforms with the laws and administrative practice 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.
 7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 5

TAX EXAMINATIONS 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 public policy (ordre public) of the requested Party.
2. This Agreement shall not impose upon a requested Party any obligation to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 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 kept confidential.
2. Information provided to the competent authority of the requesting Party may not be used for any purpose other than for the purposes stated in Article 1 without the prior written consent of the competent authority of the requested Party.
3. 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. 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, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult as necessary 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

MUTUAL AGREEMENT PROCEDURES

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under this Agreement.
3. The Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

ARTICLE 10

ENTRY INTO FORCE

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters 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 11

TERMINATION

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

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at 60 rue de on this 12 day of in the year 2011



**FOR THE GOVERNMENT OF
JERSEY**



**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**



JOINT DECLARATION

BY

SOUTH AFRICA AND JERSEY

South Africa and Jersey desire to strengthen their economic and trading relationship. Each country recognises the other's commitment to operate financial regulatory systems that meet the highest international standards in order to combat money laundering, terrorist financing and other financial and fiscal crimes. The Agreement for the Exchange of Information Relating to Tax Matters signed today is a further step in the global effort to establish an international financial system based on co-operation between countries, transparency and effective exchange of information in tax matters, all of which strengthen stability and the integrity of countries' tax systems.

The broadening of the political and economic relationship between South Africa and Jersey, signalled by the Agreement signed today, will be an ongoing process. Following the entry into force of this Agreement, South Africa and Jersey will continue to examine what measures could be adopted to further enhance their political and economic relationship, including further clarification of elements of double taxation, discrimination and other undesired tax barriers.

The Government of the Republic of South Africa welcomes Jersey as a member of the community of nations committed to international cooperation and information exchange on tax matters, and affirms that Jersey will be treated accordingly by the South African authorities. For its part the States of Jersey fully acknowledges the mutual obligations created by the Agreement.

..... 12 July 2011

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE STATES
OF JERSEY

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
Faroes	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