
STATES OF JERSEY



ENTRY INTO FORCE OF THE PROTOCOL AMENDING THE JERSEY- IRELAND PARTIAL DOUBLE TAXATION AGREEMENT (2009)

**Presented to the States on 24th April 2025
by the Minister for External Relations**

STATES GREFFE

REPORT

This Report to the States Assembly provides an update following the signature of the Protocol amending the partial Double Taxation Agreement (“DTA”) concluded between Jersey and Ireland in 2009 and notifies the Assembly of the impending entry into force of the Protocol.

Annexes

· Annex I – PROTOCOL BETWEEN IRELAND AND JERSEY AMENDING THE AGREEMENT OF 26 MARCH 2009 FOR AFFORDING RELIEF FROM DOUBLE TAXATION WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND ESTABLISHING A MUTUAL AGREEMENT PROCEDURE IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

· Annex II – 2009 AGREEMENT BETWEEN IRELAND AND JERSEY FOR AFFORDING RELIEF FROM DOUBLE TAXATION WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND ESTABLISHING A MUTUAL AGREEMENT PROCEDURE IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

MINISTER FOR EXTERNAL RELATIONS

24 April 2025

EXECUTIVE SUMMARY

As part of the Island's efforts to maintain its alignment with global minimum standards and best practices regarding international tax and transparency, the Government of Jersey has undertaken negotiations to update a number of existing cross-border tax agreements.

This includes the partial DTA signed with Ireland in 2009, which will be amended by a Protocol concluded with the Irish Government in 2023. The Protocol is not expected to impact the majority of taxpayers and no objections were raised by the multiple stakeholders engaged through the consultation process conducted prior to signature.

Ireland has completed the necessary procedures to bring the Protocol into force and the Minister for External Relations plans to respond in kind following notification to the Assembly. The provisions of the Protocol will have effect from the 2026 tax year.

BACKGROUND

As an associate of the OECD's Inclusive Framework on Base Erosion and Profit Shifting ("BEPS"), Jersey is required to ensure that its network of DTAs are compliant with the minimum standards set out in BEPS Actions 6 and 14. These require jurisdictions to ensure that wording is included in their DTAs which prevents their use for abusive purposes (Action 6) and to improve the operation of the mutual agreement procedure (MAP), which provides recourse for taxpayers who believe that a DTA has not been properly applied in their case (Action 14).

The OECD developed model text for jurisdictions to use to amend their DTAs to bring them in line with BEPS. Jersey implemented these changes in the majority of our existing DTAs following the ratification by the States Assembly on 15th November 2017 of the multilateral legal instrument ("MLI"), which allowed jurisdictions to amend some types of bilateral DTAs on a multilateral basis.

It was not possible to amend all of Jersey's DTAs by way of the MLI. Partial DTAs, such as the one between Jersey and Ireland, being more bespoke in nature, could not be revised using the MLI and require protocols to be negotiated bilaterally to amend the agreements to bring them in line with the BEPS standards. To ensure that the agreement is compliant with the BEPS minimum standards, therefore, the two jurisdictions agreed to negotiate the necessary amending Protocol, with discussions being concluded in October 2023.

NEGOTIATIONS

The intention of the negotiations was to ensure that Jersey's agreement with Ireland is compliant with the BEPS minimum standards. In addition, the territorial definitions were updated to align more closely with the latest approaches under international law. The Protocol therefore reflects this position, with the following salient features:

- The replacement of the original preamble with an updated version stating the intention of the agreement is to preclude the use of the relevant agreement for tax evasion, tax avoidance, or treaty shopping.
- Amendment of the mutual agreement procedure (“MAP”) article to permit a taxpayer who believes they have not been treated in accordance with the provisions of the agreement to bring their case to the authorities of either Jersey or Ireland, instead of only the jurisdiction of which they are resident.
- The inclusion of an article limiting the entitlement of a taxpayer to treaty benefits where a particular transaction was structured in such a way with the main purpose of obtaining a benefit under the treaty. Notwithstanding this, the Protocol permits a tax authority to grant treaty benefits even where this test is failed, if it considers that the benefits would have been available in the absence of the transaction.
- Amendment of the definitions of both Jersey and Ireland used in the original partial DTA, to better reflect changes in the approach since the signature of the original agreement.

Revenue Jersey has advised that the impact of the amendments under the Protocol will be relatively limited for most taxpayers, as the changes to the preamble and the insertion of the entitlement to benefits article are anti-abuse measures intended specifically to prevent the misuse of the agreements. The changes to the MAP article will, in theory, make it easier for taxpayers to obtain redress if needed, but in practice these articles have been very rarely invoked.

CONSULTATION AND SIGNATURE

In line with the process for the conclusion of cross-border tax agreements:

1. The Economic and International Affairs Scrutiny Panel received a briefing on the Protocol and no issues were raised.
2. A consultation process was undertaken with the members of the Fiscal Strategy Group of Jersey Finance Limited, who did not raise any questions or concerns.
3. In line with the process set out in the 2019 Letter of Entrustment, whereby the UK confirmed the circumstances in which it is content for Jersey to negotiate tax agreements in its own name, the UK Ministry of Justice was consulted and indicated that the Protocol gave rise to no concerns on its part.

On this basis, the Minister for External Relations signed the Protocol on 23rd November 2023 in Dublin alongside Irish Finance Minister Michael McGrath.

NEXT STEPS

As stated in Article 5 of the Protocol, the agreement will enter into force upon confirmation by both Parties that the respective procedures for domestic approval of the Protocol have been concluded. The provisions of the Protocol will have effect from the tax year beginning the year following the year of entry into force.

Jersey received notification on 23rd December 2024 that Ireland has completed its domestic approval of the Protocol and as such, following this notification to the Assembly, the Minister for External Relations will seek to respond in kind for Jersey by the end of the first week of May 2025. This will determine that the Protocol's provisions have effect from the 2026 tax year.

PROTOCOL BETWEEN JERSEY AND IRELAND AMENDING THE AGREEMENT OF 26 MARCH 2009 FOR AFFORDING RELIEF FROM DOUBLE TAXATION WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND ESTABLISHING A MUTUAL AGREEMENT PROCEDURE IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

The Government of Jersey and the Government of Ireland;

Desiring to conclude a Protocol to amend the Agreement between Jersey and Ireland for Affording Relief from Double Taxation with respect to Certain Income of Individuals and Establishing a Mutual Agreement procedure in Connection with the Adjustment of Profits of Associated Enterprises signed on 26 March 2009;

Have agreed as follows:

ARTICLE 1

The Preamble to the Agreement shall be deleted and replaced by the following Preamble:

“The Government of Jersey and the Government of Ireland, recognising that the two Governments have concluded an Agreement for the Exchange of Information Relating to Tax Matters;

Desiring to conclude an Agreement for affording relief from double taxation with respect to certain income of individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises;

Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:”.

ARTICLE 2

Sub-paragraphs (a) and (b) of paragraph 1 of Article 3 (DEFINITIONS) shall be deleted and replaced by the following:

“(a) “Jersey” means the Bailiwick of Jersey, and includes the territorial sea adjacent to the islands of Jersey, to which the laws of Jersey extend;

(b) “Ireland” includes any area outside the territorial seas of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;”.

ARTICLE 3

Paragraphs 1 and 2 of Article 9 (MUTUAL AGREEMENT PROCEDURE) of the Agreement shall be deleted and replaced by the following:

- “1. Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.”.

ARTICLE 4

The following new Article 9A (ENTITLEMENT TO BENEFITS) shall be inserted after Article 9 (MUTUAL AGREEMENT PROCEDURE) of the Agreement as follows:

“ARTICLE 9A

ENTITLEMENT TO BENEFITS

1. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which the request has been made will consult with the competent authority of the other Party before rejecting a request made under this paragraph by a resident of that other Party.”.

ARTICLE 5

1. Each of the Parties shall notify to the other in writing the completion of the procedures required by its law for the bringing into force of this Protocol.

2. This Protocol shall enter into force on the date of the later of these notifications, and its provisions shall have effect for tax years beginning on or after the first day of January in the calendar year following the year of the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Dublin on this 23rd day of November 2023.

For the Government of Jersey:



Deputy Ian Gorst
Minister for Treasury and Resources
and Assistant Minister for
External Relations

For the Government of Ireland:



Michael McGrath TD
Minister for Finance

**AGREEMENT BETWEEN IRELAND AND JERSEY
FOR AFFORDING RELIEF FROM DOUBLE TAXATION WITH RESPECT
TO CERTAIN INCOME OF INDIVIDUALS
AND ESTABLISHING A MUTUAL AGREEMENT PROCEDURE IN
CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED
ENTERPRISES**

The Government of Ireland and the Government of Jersey, recognising that the two Governments have concluded an Agreement for the Exchange of Information Relating to Tax Matters, and desiring to conclude an Agreement for affording relief from double taxation with respect to certain income of individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises,

have agreed as follows:

**ARTICLE 1
PERSONS COVERED**

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

**ARTICLE 2
TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of the Jersey:

the income tax;

(hereinafter referred to as "Jersey tax");

(b) in the case of Ireland:

(i) the income tax;

(ii) the income levy; and

(iii) the corporation tax;

(hereinafter referred to as "Irish 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 which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3 DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) "Jersey" means the Bailiwick of Jersey, including its territorial sea;
 - (b) "Ireland" means Ireland and includes any area outside the territorial waters of Ireland which has been or may hereafter be designated under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;
 - (c) "competent authority" means in the case of Jersey, the Treasury and Resources Minister or his authorised representative, and in the case of Ireland, the Revenue Commissioners or their authorised representative;
 - (d) "enterprise of a Party" and "enterprise of the other Party" mean respectively an enterprise carried on by a resident of a Party and an enterprise carried on by a resident of the other Party;
 - (e) "Party" means Jersey or Ireland, as the context requires;
 - (f) "person" includes an individual, a company and any other body of persons; and
 - (g) "tax" means Jersey tax or Irish tax as the context requires.
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 law of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4 RESIDENT

1. For the purposes of this Agreement, the term "resident of a Party" means any person who, under the laws of that Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that Party.

2. Where, by reason of the preceding provisions of this Article, a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Party in which a permanent home is available to him; if a permanent home is available in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Parties or in neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

3. Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

ARTICLE 5

PENSIONS AND ANNUITIES

1. Subject to the provisions of Article 6, pensions paid to an individual who is a resident of a Party in consideration of past employment and any annuity paid to such a resident in consideration of past employment shall be taxable only in that Party.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 6

GOVERNMENT SERVICE

- 1.
 - (a) Salaries, wages and other similar remuneration paid by a Party or a local authority thereof to an individual in respect of services rendered to that Party or authority in the discharge of functions of a governmental nature shall be taxable only in that Party.
 - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who did not become a resident of that Party solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Party or a local authority thereof to an individual in respect of services rendered to that Party or authority in the discharge of functions of a governmental nature shall be taxable only in that Party.

3. The provisions of this Article shall not apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Party or a local authority thereof.

ARTICLE 7 STUDENTS

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

ARTICLE 8 ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

1. Where:

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

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

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

3. Where a Party intends to adjust the profits of an enterprise in accordance with the principles set out in paragraph 1, it shall in accordance with its domestic law inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Party. However, the Party providing such information shall not be prevented from making the proposed adjustment.

ARTICLE 9

MUTUAL AGREEMENT PROCEDURE

1. Where any persons consider that the actions of one or both of the Parties result or will result for them in taxation not in accordance with the provisions of this Agreement, they may, irrespective of the remedies provided by the domestic law of those Parties, present their case to the competent authority of the Party of which they are a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. Formal communications made in connection with or pursuant to the provisions of this Agreement will be in writing directly to the competent authority of the other Party at such address as may be notified by one Party to the other from time to time. Any subsequent communications will be either in writing or verbally, whichever is most practical, between the aforementioned competent authorities or their authorised representatives.

ARTICLE 10

ENTRY INTO FORCE

This Agreement shall enter into force when each Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- (a) in Jersey on taxes chargeable for any tax year beginning on or after the first day of January 2010, and;
- (b) in Ireland:
 - (i) in respect of income tax and the income levy, for any year of assessment beginning on or after the first day of January 2010;

(ii) in respect of corporation tax, for any financial year beginning on or after the first day of January 2010.

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. Such termination shall become effective:
 - (a) in Jersey on taxes chargeable for any tax year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given, and;
 - (b) in Ireland:
 - (i) in respect of income tax and the income levy, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.
3. Notwithstanding the provisions of paragraph 1 and 2, this Agreement shall, upon receipt of written notice of termination of the Agreement for the Exchange of Information Relating to Tax Matters between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

In witness whereof the undersigned, being duly authorised in that behalf by their respective Governments, have signed this Agreement.

Done in duplicate, this 26 day of March, 2009.

FOR IRELAND:

Brian Lenihan

FOR JERSEY:

T A Le Sueur