STATES OF JERSEY

MODEL AGREEMENTS ON TAXATION OF SAVINGS INCOME

Lodged au Greffe on 18th May 2004
by the Policy and Resources Committee

STATES GREFFE

PROPOSITION

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

(a) to approve the 2 Model Agreements, as set out in the Appendix to the report of the Policy and Resources Committee dated 14th May 2004, as the basis for bilateral agreements on taxation of savings income to be entered into with each of the 25 Member States of the European Union;

(b) to authorise the President of the Policy and Resources Committee to sign these bilateral agreements or any documents ancillary thereto on behalf of the Island; and

(c) to charge the Policy and Resources Committee to prepare the necessary legislative changes to enable the implementation of these Agreements for consideration by the States.

POLICY AND RESOURCES COMMITTEE

AGREEMENTS TO BE ENTERED INTO WITH INDIVIDUAL EU MEMBER STATES ON THE TAXATION OF SAVINGS INCOME

Introduction

1. In June 2003 the States were informed by the President of the Policy and Resources Committee that –

   - the EU after some 6 years of negotiations had adopted what is known as the EU Tax Package which included a Directive on the Taxation of Savings Income;
   - it was considered to be in the Island's best interests to adopt a good neighbour policy;
   - while in keeping with an overall strategy of constructive engagement the Island had sought to help the EU achieve its objective, the Island's best interests would be firmly defended in doing so;
   - any agreement the Island entered into would be conditional upon the existence of a level playing field and would be subject to agreement by the States;
   - the Committee intended to recommend to the States that Jersey should adopt the withholding tax option on the same timetable and at the same rates as the three EU Member States and named third countries, including Switzerland;
   - the Committee would bring specific proposals to the States in due course.

   The Committee has been working with its counterparts in Guernsey and the Isle of Man to negotiate mutually acceptable agreements with the countries of the European Union. With the conclusion of these negotiations, and after confirmation by the Finance Ministers of the EU that they are willing to proceed, the Committee is now in the position to present specific proposals to the States.

2. The Model Agreements attached to this report, relating to the taxation of savings income, have been negotiated by the Crown Dependencies – Jersey, Guernsey and the Isle of Man – with the EU High Level Group on direct taxation, in conjunction with representatives of the Presidency of the European Union and of the European Commission. These Model Agreements have been formally accepted by the EU Member States as the basis upon which individual agreements are to be entered into between each of the Crown Dependencies and each of the 25 EU Member States. There are 2 Model Agreements, one relating to those EU Member States that have opted to apply a withholding tax through what is described as the transitional period; and the other for those EU Member States that have opted for automatic exchange of information.

3. The States are now being asked to agree that –

   - the Model Agreements can be used for the bilateral agreements to be entered into with each of the 25 EU Member States;
   - the President of the Policy and Resources Committee can sign the bilateral agreements on behalf of the Island;
   - the Policy and Resources Committee should be requested to present to the States the necessary legislation to implement the bilateral agreements, when the Committee considers it an appropriate time to do so.

4. Each of the agreements entered into, once signed by both parties, will be presented to the States for information. However it should be noted that the signing of the bilateral agreements does not bring them automatically into force. For this to happen the States will need to approve the necessary legislation to bring the agreements into effect, and the States will only be asked to make the final decision in this

respect if the conditions referred to in Article 17 of the Model Agreements have been met. Article 17 states that–

> "*The application of this agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or the Agreement, and providing for the same dates of implementation.*"

Background

5. The European Union on 3rd June 2003 formally adopted Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments. The preamble to the Directive states that its ultimate aim is to enable savings income in the form of interest payments made in one member state to beneficial owners who are individuals resident in another member state to be made subject to effective taxation in accordance with the laws of the latter member state.

6. The Directive built on a consensus among EU Member States reached at the Feira European Council of June 2000 and the subsequent Ecofin Council meetings of November 2000, December 2001 and January 2003.

7. The European Union's overall position is that the ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's member state of residence for tax purposes should be achieved through the exchange of information concerning interest payments between member states. However, it has been agreed that 3 member states, Austria, Belgium and Luxemburg, need not apply automatic exchange of information at the same time as the other member states. For a transitional period, during which it is accepted by the EU that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively from 15% to 20% and then to 35%, these three member states will apply a withholding tax to the savings income covered by the Directive.

8. The European Union Member States were concerned however that so long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the member states did not all apply measures equivalent to, or the same as, those provided for by the Directive, capital flight toward these countries or territories could imperil the attainment of the Directive's objectives. For this reason the European Union has sought to conclude agreements with the countries and territories concerned that provide for the objectives of the Directive to be met from the same date as within the EU Member States within these countries and territories The intention in respect of non-EU jurisdictions is set out in Article 17 of the Directive to which paragraph (1 of the preamble to the Model Agreement refers.

9. The Crown Dependencies acting in concert decided to take the initiative in the autumn of 2003 and produce draft Agreements for the EU Member States to consider. The draft Agreements were sent to the Finance Ministers of each of the then 15 Member States and the then 10 new accession countries. By taking this step the Island Authorities placed themselves in a stronger negotiating position than otherwise would have been the case. Of particular importance is that it also enabled the Crown Dependencies to better establish their international personality in negotiating and concluding such tax agreements.

10. The Crown Dependencies in responding to the wish of the EU Member States that the measures provided for in the Directive should be supported by the Crown Dependencies have had firmly in mind the following principles –

- the Crown Dependencies relationship with the European Union is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community, and under the terms of that protocol the Crown Dependencies are not within the EU fiscal territory;

- there should be a "level playing field" embracing jurisdictions with whom the Crown Dependencies are in competition, and particularly those competing jurisdiction that are within Europe of which Switzerland is the most significant;

- acceptance of the importance of exchange of information and transparency for the efficient working of international financial markets,

- the Crown Dependencies' economic interests must be safeguarded;

- the Crown Dependencies' overall interests are to be well served through the pursuit of a good neighbour policy in respect of the European Union Member States;

- the Crown Dependencies' fiscal autonomy, whereby any obligations in bilateral tax agreements being entered into will be their obligations and those of the other party to the agreement only.

11. The Crown Dependencies have worked extremely closely together in reaching agreement with the EU Member States and this co operation has been reflected in the strength of their representations during the negotiations. The Crown Dependencies together have been able to convey to the EU Member States, the Presidency and the European Commission a clear position of a common concern to defend their interests at the same time as adopting a constructive positive position in their future relationship with the European Union.

12. Throughout the negotiations, the Crown Dependencies have expressed concern that in offering their support to the EU their competitive position would be adversely effected if pressure is not brought to bear on jurisdictions such as Singapore and Hong Kong which are currently not covered by the EU arrangements. As far as the main European competitors of Switzerland and Luxemburg are concerned, the Crown Dependencies have made it clear that the agreements to be entered into with the Member States shall only come into effect when those jurisdictions and the other jurisdictions to which the Directive refers, are in full and equal compliance in accordance with the terms of Article 17 of the Model Agreement.

13. While all the Crown Dependencies are committed to the principles of information exchange and transparency, the decision of the competing jurisdictions of Switzerland and Luxemburg to opt for a withholding tax option required that the Crown Dependencies should follow suit if they were not to suffer economic damage. However, the 'withholding tax' referred to in the Directive will be referred to as the 'retention tax' within the Islands. This is to distinguish the Islands from the Member States to reflect the fact that they are not a part of the European Union and are not subject to the Directive.

The Model Agreements

14. The Model Agreements include a clear statement to the effect that the contracting parties "have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only". The same language is being negotiated in the agreements with OECD Member States under the separate OECD tax initiative on tax information exchange and transparency. The U.K. Government in diplomatic notes exchanged with individual Member States, and also in correspondence with the Crown Dependencies, has confirmed the Islands' assertion that the Crown Dependencies are able to negotiate and conclude bilateral agreements with individual Member States. Furthermore it has been stated clearly that it is for the Crown Dependencies to exercise their rights and carry out their obligations under any such agreement. The U.K. Government has also made it clear that it will not play any part in the implementation of any agreement and accepts that it is for the parties to the agreement to resolve any difficulties arising therefore and accepts that it is for the Crown Dependencies to suspend or terminate any such agreement in accordance with its terms.

15. The face-to-face discussions that the Crown Dependencies have had with those representing the Presidency of the EU and the European Commission, and the fact that the Crown Dependencies will be

signing agreements with the individual Member States in their own right, represents a considerable step forward in the proper recognition of their fiscal autonomy and international personality.

16. All the Crown Dependencies have agreed to apply a retention tax with effect from the 1st January 2005 provided that the Member States of the European Union have adopted the laws, regulations and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive (mirrored in Article 17 of the Model Agreements) have been met. The Member States will be undertaking a review in June and will then decide whether the conditions set out in Article 17 have been met. The same provision is included in Article 17(2) of the Model Agreements.

17. There are other safeguards in the Model Agreements. If difficulties are confronted Article 16 provides for the termination of agreements and Article 17 provides for the suspension of the application of agreements in the circumstances to which the Articles refer.

18. The text of the Model Agreements follows that of the EU Directive with appropriate adaptations and in the application of the agreements, on which written guidance will be provided, further account will be taken of the particular circumstances of the Crown Dependencies in terms of their size and business structure. In drawing up the guidance the Crown Dependencies are continuing their close working relationship, and are also consulting fully with those institutions in each island who will be involved with the implementation of the bilateral agreements.

19. While each of the Crown Dependencies has opted for the retention tax, under Article 14 of the Model Agreement there is an opportunity, should they so wish to take it, to change to automatic exchange of information at any time.

20. The 3 Member States that have opted for a withholding tax are subject to a transitional period at the end of which they will transfer to automatic exchange of information. The Crown Dependencies are faced with the same prospect.

21. The transitional period does not have a fixed end date. It only comes to an end when the terms set out in Article 10 of the Directive are met. To quote from the Directive–

> *"The transitional period shall end at the end of the first full fiscal year following the later of the following dates:*
>
> - *the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on the 18th April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1) of the Directive;*
>
> - *the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement in respect to interest payments as defined in this Directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies."*.

22. During the transitional period, which it should be assumed will commence on 1st January 2005, the withholding/retention tax will be levied at the rate of 15% during the first 3 years of that period, 20% for

the subsequent 3 years and 35% thereafter. Of the retention tax to be levied 25% will be retained by the Crown Dependencies and 75% will be transferred to the member state of residence of the beneficial owners of the interest.

23. There are some exceptions to the application of the retention tax. Under the provisions of Article 3 of the Model Agreements there is provision for the use of one of the following procedures in order to ensure that the beneficial owners can if they so wish request that no tax be retained –

- a procedure which allows the beneficial owner expressly to authorise the paying agent to report information on the interest payments to the competent authority of the party in which the paying agent is established. Such voluntary authorisations will cover all interest payments made to the beneficial owner by that paying agent;

- a procedure which ensures a retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the party of residence for tax purposes in accordance with arrangements set out in both the Model Agreement and the Directive.

24. Legislation will need to be enacted to provide for the retention tax to be applied to those who are to be subject to the tax. Provision will also need to be made for the exchange of information where those subject to the retention tax decide to take advantage of the voluntary disclosure arrangements referred to in paragraph 22 above. Subject to their approval of the Model Agreements, and the satisfying of the conditions in Article 17 of those Agreements, the States will be asked to approve an enabling law which will provide for Regulations to be made implementing international obligations and agreements with the governments of other countries and territories regarding or relating to taxation. The intention is that the enabling law will be presented to the States for debate in July, and the Regulations would be presented in September/October if the conditions set out in Article 17 of the Directive and of the Model Agreements have been satisfied, and it is confirmed that 1st January 2005 is the operative date and that all of the EU member states, the named third countries and the relevant dependent and associated territories of the member states are in compliance with the provisions of Article 17.

25. As noted in paragraph 17 above, those subject to the provisions of the bilateral agreements will be assisted in carrying out the obligations arising from the agreements by the provision of written guidance. A final version of the guidance is currently being prepared in consultation with the finance industry and the other Crown Dependencies. The guidance notes, for example, will assist in determining who is a paying agent with an obligation to retain the tax; and who is to be subject to the tax on interest payments received. The notes will make it very clear that those subject to the tax are limited to individuals resident in a EU Member State, and that companies and trusts (with a few exceptions) do not come within the scope of the agreements.

26. In drafting the guidance the objective has been to rely on existing practices as far as possible and limit the administrative burden. Thus, for example, in determining the identity and residence of those who are to be subject to retention tax the paying agents should be able to rely upon their existing 'know your customer' practices arising from the obligations already placed upon them under the existing money laundering and terrorism legislation.

27. A number of benefits are expected to flow from the closer working relationship which has been established between the Crown Dependencies and the EU Member States. A better understanding has been established of the Crown Dependencies' fiscal autonomy and international personality. There is also greater recognition of the commitment of the Crown Dependencies to international standards in the application of financial regulation and anti-money laundering measures. One example of where some benefit is already being derived arises from the acceptance in the Model Agreements that the regulation of undertakings for collective investment are deemed to be equivalent to the regulation of UCITS in the European Community.

28. The overall outcome of what at times has been a difficult process has been a clear demonstration of the wish of the Crown Dependencies to be good neighbours while at the same time defending their interests and in particular their fiscal autonomy. The Model Agreements reflect this. It is firmly believed that the Model Agreements that have been agreed with the Member States represent a good outcome for the Crown Dependencies from the negotiations that have taken place with the EU Member States. The adoption of the Model Agreements and their use as the basis for bilateral agreements with individual EU Member States is considered to be in the best interests of all the Island and therefore to be supported.

14th May 2004

APPENDIX

'MODEL'AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN EACH OF (GUERNSEY, ISLE OF MAN, AND JERSEY) AND EACH INDIVIDUAL EU MEMBER STATE THAT IS TO APPLY THE WITHHOLDING TAX IN THE TRANSITIONAL PERIOD

WHEREAS:

(1) Article 17 of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that before 1st January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from 1st January 2005 provided that:

"(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

(ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional perioc defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)".

(2) The relationship of [the Island] with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol [the Island] is not within the EU fiscal territory.

(3) [The Island] notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

(4) The "withholding tax" referred to in the Directive will be referred to as the "retention tax" in [the Island's] domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as "withholding/retention tax" and shall have the same meaning.

(5) [The Island] has agreed to apply a retention tax with effect from 1st January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement hav generally been met.

(6) [The Island] has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive.

(7) [The Island] has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

The [Island] and [Member State] hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires,

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding/ retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

(b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive;

(c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding/retention tax levied under this Agreement,

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term 'competent authority' when applied to the [contracting parties] means [ ].

Article 1 Withholding/Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in the jurisdiction of a contracting party to beneficial owners within the meaning of Article 5 of this Agreement who are residents of the other contracting party shall, subject to Article 3 of this Agreement, be subject to a withhold/retention from the amount of interest payment during the transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement . The rate of withholding/retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 2 Reporting of Information by Paying Agents

Where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund.

Article 3 Exceptions to the Withholding/Retention Tax Procedure

(1) A contracting party when levying a withholding/retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the withholding/retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that withholding/retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph (2) of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

(a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of the contracting party in which the paying agent is established shall communicate the information referred to in Article 2 of this Agreement to the competent authority of the contracting party of the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 4 Basis of assessment for withholding/retention tax

(1) A paying agent established in a contracting party shall levy withholding/retention tax in accordance with Article 1 of this Agreement as follows:

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

(e) where a contracting party exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the withholding/retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of withholding/retention tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, the contracting party levying withholding/retention tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding/retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

Article 5 Definition of beneficial owner

(1) For the purposes of this Agreement "beneficial owner" shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

(a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;

(b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment;

(c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph (1)(a) nor (1)(b) of this Article apply, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 6 Identity and residence of beneficial owners

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10th June 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January 2004 the paying agent shall establish the identity of the

beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1st January 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official document shall be considered to be the country of residence.

Article 7 Definition of paying agent

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

(a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated fo the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established i the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub-paragraph (a) of paragraph (2) of this Article are:

(a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 8 Definition of interest payment

(1) For the purposes of this Agreement "interest payment" shall mean:

(a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 7 (2) of this Agreement, distributed by:

(i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or

(ii) an equivalent undertaking for collective investment established in [the Island];

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC; or

(ii) an equivalent undertaking for collective investment established in [the Island].

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and

outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such incom corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1) (a) and (b) of this Article.

(2) As regard paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1)(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1st January 2011 be 25%.

(8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 9 Withholding/Retention Tax Revenue sharing

(1) A contracting party which applies withholding/retention tax shall retain 25% of the withholding/retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) A contracting party levying withholding/retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.

(4) A contracting party levying withholding/retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 10 Elimination of double taxation

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding/retention tax to which this Agreement refers in accordance with the following provisions:

(i) if interest received by a beneficial owner has been subject to withholding/retention tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the withholding/retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

Article 11 Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 14 of this Agreement, but until 31st December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March 2002. However, should the transitional period continue beyond 31st December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

– which contain gross up and early redemption clauses; and

– where the paying agent as defined in Article 7 of this Agreement is established in a contracting party applying withholding/retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1st March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1st March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt

claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

Article 12 Mutual agreement procedure

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

Article 13 Confidentiality

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 14 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive, the contracting parties shall cease to apply the withholding/retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period either of the contracting parties elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

Article 15 Entry into force

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1st January 2005.

Article 16 Termination

(1) This Agreement shall remain in force until terminated by either contracting party.

(2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

Article 17 Application and suspension of application

(1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra,

Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.

(2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard t the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.

(3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the applicatior of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.

(4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 11

For the purposes of Article 11, the following entities will be considered to be a "related entity acing as a public authority or whose role is recognised by an international treaty"':

A. entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region)
	Région wallonne (Walloon Region)
	Région bruxelloise/Brussels Gewest (Brussels Region)
	Communauté française (French Community)
	Vlaamse Gemeenschap (Flemish Community)
	Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia)
	Junta de Andalucía (Regional Executive of Andalusia)
	Junta de Extremadura (Regional Executive of Extremadura)
	Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha)
	Junta de Castilla-León (Regional Executive of Castilla-León)
	Gobierno Foral de Navarra (Regional Government of Navarre)
	Govern de les Illes Balears (Government of the Balearic Islands)
	Generalitat de Catalunya (Autonomous Government of Catalonia)
	Generalitat de Valencia (Autonomous Government of Valencia)
	Diputación General de Aragón (Regional Council of Aragon)
	Gobierno de las Islas Canarias (Government of the Canary Islands)
	Gobierno de Murcia (Government of Murcia)
	Gobierno de Madrid (Government of Madrid)
	Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
	Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
	Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
	Diputación Foral de Alava (Regional Council of Alava)
	Ayuntamiento de Madrid (City Council of Madrid)
	Ayuntamiento de Barcelona (City Council of Barcelona)
	Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
	Cabildo Insular de Tenerife (Island Council of Tenerife)
	Instituto de Crédito Oficial (Public Credit Institution)
	Instituto Catalán de Finanzas (Finance Institution of Catalonia)
	Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	Ïñãáíéóµüò Ôçëåðéêïéíùíéþí ÅëëÜäïò (National Telecommunications Organisation)
	Ïñãáíéóµüò Óéäçñïäñüµùí ÅëëÜäïò (National Railways Organisation) çµüóéá Åðé÷åßñçóç Çëåêôñéóµïý (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
	L'Agence française de développement (AFD) (French Development Agency)
	Réseau Ferré de France (RFF) (French Rail Network)
	Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
	Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
	Charbonnages de France (CDF) (French Coal Board)
	Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions
	Provinces

	Municipalities
	Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira)
	Região Autónoma dos Açores (Autonomous Region of Azores)
	Municipalities

B. International entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

C. Entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3 such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

'MODEL'AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN EACH OF (GUERNSEY, ISLE OF MAN, AND JERSEY) AND EACH INDIVIDUAL EU MEMBER STATE THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION

WHEREAS:

(1) Article 17 of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that before 1st January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from 1st January 2005 provided that:

"(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

(ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional perioc defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)".

(2) The relationship of [the Island] with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol [the Island] is not within the EU fiscal territory.

(3) [The Island] notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

(4) The "withholding tax" referred to in the Directive will be referred to as the "retention tax" in [the Island's] domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as "withholding/retention tax" and shall have the same meaning.

(5) [The Island] has agreed to apply a retention tax with effect from 1st January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement hav generally been met.

(6) [The Island] has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of th Directive.

(7) [The Island] has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

[**The [Island] and [the Member State] hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires,**

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the automatic exchange of information by the competent authority of the [Member State] to the competent authority of [the Island] in the same manner as to the competent authority of a Member

State;

(b) the application by [the Island], during the transitional period defined in Article 10 of the Directive of a retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

(c) the automatic exchange of information by the competent authority of [the Island] to the competent authority of the [Member State] in accordance with Article 13 of the Directive.

(d) the transfer by the competent authority of [the Island] to the competent authority of the [Member State] of 75% of the revenue of the retention tax.

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term 'competent authority' when applied to the [contracting parties] means [ ].

Article 1 Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in [the Island] to beneficial owners within the meaning of Article 5 of this Agreement who are residents of [the Member State] shall, subject to Article 3 of this Agreement, be subject to a retention from the amount of interest payment during the transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement. The rate of retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 2 Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 8 of this Agreement, are made by a paying agent established in a [the Member State] to beneficial owners, as defined in Article 5 of this Agreement, who are residents of [the Island], or where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

and [the Member State] will comply with paragraph (2) of this Article.

(2) Within six months following the end of their tax year, the competent authority of [the Member State] shall communicate to the competent authority of [the Island], automatically, the information referred to in paragraph (1)(a)– (d) of this Article, for all interest payments made during that year.

Article 3 Exceptions to the Retention Tax Procedure

(1) [The Island] when levying a retention tax in accordance with Article 1 of this Agreement shall provide for

one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph (2) of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

(i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(ii) the name and address of the paying agent;

(iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of [the Island] in which the paying agent is established shall communicate the information referred to in Article 2(1) of this Agreement to the competent authority of [the Member State] as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 4 Basis of assessment for retention tax

(1) A paying agent established in [the Island] shall levy retention tax in accordance with Article 1 of this Agreement as follows:

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

(e) where [the Island] exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of retention tax by [the Island] shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, [the Island] may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

Article 5 Definition of beneficial owner

(1) For the purposes of this Agreement, "beneficial owner" shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

(a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;

(b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment.

(c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph (1)(a) nor (1)(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 6 Identity and residence of beneficial owners

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to

Council Directive 91/308/EEC of 10th June 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1st January 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

Article 7 Definition of paying agent

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

(a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an

equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub-paragraph (a) of paragraph (2) of this Article are:

(a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 8 Definition of interest payment

(1) For the purposes of this Agreement "interest payment" shall mean:

(a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 7 (2) of this Agreement, distributed by:

(i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or

(ii) an equivalent undertaking for collective investment established in [the Island];

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC; or

(ii) an equivalent undertaking for collective investment established in [the Island].

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1)(a) and (b) of this Article.

(2) As regard paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1)(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1st January 2011 be 25%.

(8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 9 Retention Tax Revenue sharing

(1) [The Island] shall retain 25% of the retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) [The Island] levying retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to [the Member State] proportionate to the transfers carried out pursuant to paragraph (1) of this Article.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of [the Island].

(4) [The Island] levying retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article10 Elimination of double taxation

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by [the Island] of the retention tax to which this Agreement refers in accordance with the following provisions:

(i) if interest received by a beneficial owner has been subject to retention tax in [the Island], the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

Article 11 Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 14 of this Agreement, but until 31st December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March 2002. However, should the transitional period continue beyond 31st December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

– which contain gross up and early redemption clauses; and

– where the paying agent is established in a contracting party applying retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1st March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an

international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1st March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

Article 12 Mutual agreement procedure

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

Article 13 Confidentiality

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 14 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive, [the Island] shall cease to apply the retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period [the Island] elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

Article 15 Entry into force

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1st January 2005.

Article 16 Termination

(1) This Agreement shall remain in force until terminated by either contracting party.

(2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

Article 17 Application and suspension of application

(1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.

(2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard t the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.

(3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the applicatior of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.

(4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, eithe contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in tha paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 11

For the purposes of Article 11, the following entities will be considered to be a "related entity acing as a public authority or whose role is recognised by an international treaty"':

A. entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	Ïñãáíéóµüò Ôçëåðéêïéíùíéþí ÅëëÜäïò (National Telecommunications Organisation) Ïñãáíéóµüò Óéäçñïäñüµùí ÅëëÜäïò (National Railways Organisation) .çµüóéá Åðé÷åßñçóç Çëåêôñéóµïý (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions Provinces

	Municipalities
	Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira)
	Região Autónoma dos Açores (Autonomous Region of Azores)
	Municipalities

B. International entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

C. Entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.