

STATES OF JERSEY



RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE STATES OF JERSEY AND THE UNITED KINGDOM

**Lodged au Greffe on 3rd June 2009
by the Chief Minister**

STATES GREFFE

PROPOSITION

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

to ratify the agreement for the exchange of information relating to tax matters between the States of Jersey and the United Kingdom as set out in the Appendix to the Report of the Chief Minister dated 28th April 2009.

CHIEF MINISTER

REPORT

RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE STATES OF JERSEY AND THE UNITED KINGDOM

1. The States are asked to ratify the signed agreement to be entered into with the United Kingdom for the exchange of information relating to tax matters attached as an Appendix to this Report.

Background

2. In February 2002 Jersey entered into a political commitment to support the OECD's tax initiative on transparency and information exchange through the negotiation of tax information exchange agreements with each of the OECD Member States.
3. The Council of Ministers' current negotiating strategy in respect of tax information exchange agreements is –
 - to build up good political and economic relationships with individual countries, particularly those in the European Union;
 - to obtain general support for the Island where matters affecting the Island are being considered within international fora;
 - to obtain the removal of key barriers to market access, such as black lists;
 - to recognise that all the Island's wishes may not be achieved to the outset, and establish a platform from which to build in securing further benefits in the future;
 - to press for action to be taken by the OECD Member States against the non-committed/non-cooperative jurisdictions who may otherwise be gaining advantage from that position.
4. The Council of Ministers have also seen the negotiation of tax information exchange agreements as one of balance between –
 - the impact on business arising from the perception that Jersey is ahead of its competitors on transparency;
 - the impact on business of negative action taken by OECD/EU Member States against non-cooperative jurisdictions, if they should decide that Jersey is in that category;
 - the impact on business of the positive action taken by OECD/EU Member States when they recognise Jersey as a cooperative jurisdiction.
5. The action the Island has taken in signing tax information exchange agreements has been recognised by the international community. On 21st October 2008, at a Conference on the 'Fight against International Tax Evasion and Avoidance: Improving Transparency and Stepping Up the Exchange of Information on Tax Matters', held in Paris, the Secretary-General of the OECD commented favourably on the action taken by Jersey in negotiating tax information exchange agreements, and stated that what is now required is "a

clear political recognition being given to those offshore financial centres that have made progress”. In the Summary of Conclusions of the Paris Conference it is stated that the participating countries “recognise the efforts made by certain jurisdictions [such as Jersey] that have set out a new direction for their financial centres and have signed tax information exchange agreements, which constitute effective instruments of fighting international tax fraud and evasion.

6. Jeffrey Owens, the Head of the OECD Centre for Tax Policy and Administration, said at the signing of the tax information exchange agreements with the Nordic countries in Helsinki on 28th October that “we at the OECD recognise the importance of the progress Jersey has made in signing TIEAs, and in receiving clear political endorsement from OECD member countries. To show that the choice Jersey has made is the right one we recognise the need for firm action to be taken with regard to those jurisdictions that are not showing the same commitment to tax information exchange”. The G20 Summit in Washington held on 15th November 2008 also issued a declaration which called upon national and regional authorities to implement national and international measures and protect the global financial system from unco-operative and non-transparent jurisdictions that pose risks of illicit financial activity.
7. These sentiments were then clearly reflected in the outcome of the G20 Summit held in London on 2nd April 2009. In particular, the list of countries published by the OECD in the form of a progress report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed tax standards. Jersey was included in the list of jurisdictions that have substantially implemented the internationally agreed tax standard – what has become known as the “white list” – in which Jersey sits alongside the United Kingdom, the United States, Germany, France, Japan, etc.
8. The importance of achieving this result is evident from the G20 Summit declaration on strengthening the financial system issued on 2nd April 2009, which states: “we stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency. To this end we have agreed to develop a tool box of effective counter measures for countries to consider.”.
9. The G20 Summit welcomed the new commitments made by a number of jurisdictions, such as Switzerland, and encouraged them to proceed swiftly with implementation. The view was also held that if there is not genuine progress in agreeing, implementing and abiding by the necessary international agreements, particularly among those jurisdictions that have only just declared their commitment to international standards, the G20 should be encouraged to take the necessary action to ensure that all abide by the high standards and the level playing field that Jersey has long pressed for is achieved. This view is fully supported by the Council of Ministers.

Procedure for Signing and Ratifying the TIEAs

10. The procedure adopted in respect of individual agreements is for industry to be consulted, and for the views of industry to be taken into account by the Council of Ministers in deciding whether to support the signing of a tax

information exchange agreement. If the Council of Ministers decide that it would be in the Island's best interests for an agreement to be signed, both parties to the agreement then exchange signed agreements which allows both to start their ratification procedures contemporaneously. Agreements are signed by the Chief Minister in accordance with the provisions of Article 18(2) of the [States of Jersey Law 2005](#) and paragraph 1.8.5 of the Strategic Plan 2006–2011 adopted by the States on 28th June 2006. Subsequent to the signing by the Chief Minister, agreements are presented to the States for ratification, are published, entered into the official record and Regulations are made for the agreements to enter into force when the domestic procedures of the other party also have been completed.

11. The States, on 29th January 2008, adopted the [Taxation \(Exchange of Information with Third Countries\) \(Jersey\) Regulations 2008](#). The Schedule to these Regulations lists the Third Countries, and includes the taxes covered by the Agreements being entered into. As further agreements are entered into, the Regulations need to be amended to include in the Schedule the jurisdiction and taxes concerned. The necessary Regulations to provide for the inclusion in the Schedule of the United Kingdom and the relevant taxes are being presented to the States for adoption subsequent to the ratification of the Agreement for the exchange of information relating to tax matters being entered into with the United Kingdom (*see* P.97/2008).
12. The Agreements do not come into force until both of the parties concerned have completed their own domestic procedures. The date when an agreement is to come into force is included in a forthcoming Schedule attached to the Regulations.

Agreement with the United Kingdom

13. The negotiations with the United Kingdom produced an agreement on the following, attached as an Appendix to this report –
 - (a) A tax information exchange agreement which is consistent with the agreements signed previously with other countries such as the United States of America in 2002, the Kingdom of the Netherlands in 2007, the Federal Republic of Germany in 2008 and the Nordic Countries in 2008.

The agreement provides for the exchange of information on tax matters on request. However, that request has to be formulated in writing with the greatest detail as possible. There can be no “fishing expeditions”. The agreement only comes into force once the States have ratified it and have approved the necessary regulations, and the United Kingdom has completed its own domestic procedures.
 - (b) An arrangement amending the 1952 arrangement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

This provides, among other things, that pensions and other similar remuneration paid to an individual who is resident of one of the territories shall be taxable only in that territory.

- (c) A memorandum of understanding that sets out the arrangements for the allocation of costs.
- (d) An exchange of letters that, among other things –
- provides that in the event that either party to the agreement applies prejudicial restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that that other party may suspend the operation of the agreement for so long as such measures apply;
 - recognises that the United Kingdom and Jersey share a common commitment to comply with international standards of anti-money laundering and counter-terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime;
 - provides that the UK will use its best endeavours to ensure that where EU Directives for Regulations include provisions referring to the position of Third Countries, particularly in relation to access to markets, Jersey is treated as fairly as other Third Countries;
 - recognises Jersey as a member of the community of jurisdictions committed to international cooperation and information exchange on tax matters and wishes to assure the States of Jersey that Jersey will be treated as such by the United Kingdom authorities. The United Kingdom also recognises the States of Jersey’s commitment to a “good neighbour” policy.

14. The negotiation of the agreements has helped to establish a good relationship with the United Kingdom, and has helped their understanding of, and has influenced favourably their attitude towards, the Island. The agreement is considered to enhance the Island’s international personality and generally to lead to a more favourable response to the Island on a wide range of market access and other economic/political issues. Implementation of the UK TIEA and other TIEAs, which now total 13, is dependent upon the Council of Ministers and States prioritising a request for additional resources of £100,000 and associated manpower for the Income Tax Office in the Strategic Plan and Business Plan processes for 2010.

28th April 2009

EXCHANGE OF LETTERS
BETWEEN THE UNITED KINGDOM AND JERSEY
CONCERNING
A TAX INFORMATION EXCHANGE AGREEMENT
AND
AN ARRANGEMENT AMENDING THE 1952 ARRANGEMENT BETWEEN
THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME

Letter from UK Minister

Sir

I have the honour to propose to you –

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Jersey for the exchange of information relating to tax matters (“the Agreement”) at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty’s Government and the States of Jersey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“the 1952 Arrangement”), at Appendix 2 to this letter and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

With a view to further enhancing the level of cooperation between the United Kingdom and Jersey, I have the honour to propose that, as soon as possible, following the entry into force of the Agreement and the 1952 Arrangement, the Governments of Jersey and the United Kingdom will resume negotiations with a view to further modernising the existing bilateral arrangements for the avoidance of double taxation.

In the event that either Party to the Agreement at Appendix 1 applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Party, it is understood that that other Party may suspend the operation of the Agreement for so long as such measures apply. For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Party to residents or citizens of either Party on the basis that the other Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

The United Kingdom and Jersey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Jersey has taken in recent years to comply with these international standards and is also pleased to note that Jersey has been recently reviewed by the IMF to assess compliance with the current international standards.

The United Kingdom will use its best endeavours to ensure that where EU Directives or Regulations include provisions referring to the position of third countries, particularly in relation to access to markets, Jersey is treated as fairly as other third countries.

The United Kingdom recognises Jersey as a member of the community of jurisdictions committed to international cooperation and information exchange on tax matters, and wishes to assure the States of Jersey that Jersey will be treated as such by the United Kingdom authorities. The United Kingdom also recognises the States of Jersey's commitment to a "good neighbour" policy.

I have the honour to propose that, if the above is acceptable to the States of Jersey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.

The United Kingdom welcomes this Agreement as a significant step in establishing Jersey's status as a jurisdiction which complies with international standards in the field of taxation, and looks forward to further progress in this area.

Please accept, Sir, the assurance of our highest consideration,

The Rt. Hon. Stephen Timms MP
Financial Secretary to the Treasury

Reply from Minister of Jersey

Sir,

I have the honour to acknowledge receipt of your letter of 10th March 2009, which reads as follows:

“Sir

I have the honour to propose to you –

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Jersey for the exchange of information relating to tax matters (“the Agreement”) at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty’s Government and the States of Jersey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“the 1952 Arrangement”), at Appendix 2 to this letter and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

With a view to further enhancing the level of cooperation between the United Kingdom and Jersey, I have the honour to propose that, as soon as possible, following the entry into force of the Agreement and the 1952 Arrangement, the Governments of Jersey and the United Kingdom will resume negotiations with a view to further modernising the existing bilateral arrangements for the avoidance of double taxation.

In the event that either Party to the Agreement at Appendix 1 applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Party, it is understood that that other Party may suspend the operation of the Agreement for so long as such measures apply. For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Party to residents or citizens of either Party on the basis that the other Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

The United Kingdom and Jersey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Jersey has taken in recent years to comply with these international standards and is also pleased to note that Jersey has been recently reviewed by the IMF to assess compliance with the current international standards.

The United Kingdom will use its best endeavours to ensure that where EU Directives or Regulations include provisions referring to the position of third countries, particularly in relation to access to markets, Jersey is treated as fairly as other third countries.

The United Kingdom recognises Jersey as a member of the community of jurisdictions committed to international cooperation and information exchange on tax matters, and wishes to assure the States of Jersey that Jersey will be treated as such by the United Kingdom authorities. The United Kingdom also recognises the States of Jersey's commitment to a "good neighbour" policy.

I have the honour to propose that, if the above is acceptable to Jersey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.

The United Kingdom welcomes this Agreement as a significant step in establishing Jersey's status as a jurisdiction which complies with international standards in the field of taxation, and looks forward to further progress in this area.

Please accept, Sir, the assurance of our highest consideration."

I am able to confirm that the States of Jersey are in agreement with the contents of your letter dated 10th March 2009 and that this letter constitutes our mutual acceptance and making of the Agreement contained in Appendix 1 and the Arrangement contained in Appendix 2 to your letter and appended to this letter.

Please accept, Sir, the assurance of our highest consideration,

Senator Terry Le Sueur
Chief Minister

**AGREEMENT BETWEEN
THE UNITED KINGDOM AND JERSEY FOR
THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS**

Whereas the United Kingdom and Jersey (“the parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

Whereas Jersey on 22 February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

Whereas the parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed to conclude the following agreement which contains obligations on the part of the parties only:

Article 1

Object and Scope of the Agreement

The parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

Article 2

Jurisdiction

A requested party is not obliged to provide information which is neither held by its authorities, nor in the possession of, nor obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the parties:
 - a) in the case of the United Kingdom,
 - i) the income tax;
 - ii) the corporation tax;
 - iii) the capital gains tax;
 - iv) the inheritance tax;
 - v) the value added tax;
 - b) in the case of Jersey,
 - i) the income tax;
 - ii) the goods and services tax.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes if the parties, through their competent authorities, so agree. The competent authority of each party shall notify the other of any substantial changes in laws which may affect the obligations of that party pursuant to this Agreement.

Article 4

Definitions

1. In this Agreement:

"United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised [but not including Jersey].

"Jersey" means the Bailiwick of Jersey, including its territorial sea;

"collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any scheme or fund in which the purchase sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

"company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

"competent authority" means,

i) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative, and

ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;

“criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

“criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting party;

“information” means any fact, statement, document or record in whatever form;

“information gathering measures” means laws and administrative or judicial procedures enabling a requested party to obtain and provide the information requested;

“person” means a natural person, an individual, a company or any other body or group of persons;

“principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

“publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

“recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the parties;

“requested party” means the party to this Agreement which is requested to provide information or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that party, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested party shall provide upon request by the requesting party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for information, the requested party shall use all appropriate information gathering measures necessary to provide the requesting party with the information requested, notwithstanding that the requested party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that it has the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and provide, through its competent authority and upon request:
 - a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and
 - (i) in the case of collective investment schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
 - (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).

Provided that this Agreement does not create an obligation on the parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

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

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested
- c) the nature of the information requested and the form in which the requesting party would prefer to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to a person identified in subparagraph (a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested party or is in the possession of or obtainable by a person within the jurisdiction of the requested party;
- g) to the extent known, the name and address of any person believed to be in possession of, or able to obtain the requested information;
- h) a statement that the request is in conformity with the law and administrative practices of the requesting party, that if the requested information was within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulty.

6. The competent authority of the requested party shall acknowledge receipt of the request to the competent authority of the requesting party, advise if there are any unexpected delays in obtaining the requested information and shall use its best endeavours to forward the requested information to the requesting party with the least reasonable delay.

Article 6

Tax Examinations Abroad

1. The competent authority of the requesting party may request that the competent authority of the requested party allow representatives of the competent authority of the requesting party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting party shall give reasonable notice to the competent authority of the requested party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting party, the competent authority of the requested party may allow representatives of the competent authority of the requesting party to attend a tax examination in the territory of the requested party.

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

Article 7

Possibility of Declining a Request

1. The competent authority of the requested party may decline to assist:

- (a) where the request is not made in conformity with this Agreement;
- (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- (c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose on a requested party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting party

the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested party may decline a request for information if the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, which discriminates against a citizen of the requested party as compared with a citizen of the requesting party in the same circumstances.

Article 8

Confidentiality

1. All information provided and received by the competent authorities of the parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

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

4. Information provided to a requesting party under this Agreement may not be disclosed to any other jurisdiction.

Article 9

Costs

Unless the competent authorities of the parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested party, and direct costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested party shall consult with the competent authority of the requesting party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The parties shall agree on other forms of dispute resolution should this become necessary.

Article 11

Entry into Force

Each of the Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications, and shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 12

Termination

1. Either party may terminate the Agreement by giving a notice of termination in writing.
2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. A party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

ARRANGEMENT BETWEEN HER MAJESTY’S GOVERNMENT AND THE STATES OF JERSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1994 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS

Her Majesty’s Government and the States of Jersey;

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangement between the two governments for the avoidance of double taxation;

Have agreed as follows:

1. In this Arrangement the term “1952 Arrangement” means that Arrangement as amended by the 1994 Arrangement.
2. After paragraph 2(1)(j) of the 1952 Arrangement there shall be inserted the following:
 - “(k) the term “taxation authority” means:
 - (i) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - (ii) in Jersey, the Treasury and Resources Minister or his authorised representative.”

3. Paragraph 4 of the 1952 Arrangement shall be deleted and replaced with the following:

“4. -(1) Where:

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

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

(2) Where one of the territories includes in the profits of an enterprise of that territory - and taxes accordingly - profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the taxation authorities of the territories shall if necessary consult each other.”

4. After paragraph 5 of the 1952 Arrangement there should be inserted the following paragraph:

“5A. Subject to the provisions of paragraph 6, pensions and other similar remuneration paid to an individual who is a resident of one of the territories shall be taxable only in that territory.”

5. After paragraph 9A of the 1952 Arrangement there shall be inserted the following new paragraph:

“9B. -(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the taxation authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the taxation authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The taxation authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

(4) The taxation authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph.”

6. Paragraph 10(2) of the 1952 Arrangement shall be deleted.

7. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Arrangement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Arrangement enters into force;

(b) in Jersey: in respect of income tax, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Arrangement enters into force.

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MEMORANDUM OF UNDERSTANDING
between
THE COMPETENT AUTHORITY OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND (“THE UNITED KINGDOM”)
and
THE COMPETENT AUTHORITY OF JERSEY

concerning the liability for costs of obtaining and providing information in response to a request under the Agreement between the United Kingdom and Jersey for the exchange of information relating to tax matters and **concerning** formal communications between the parties.

The competent authorities of the United Kingdom and Jersey, desiring to facilitate the exchange of information relating to tax matters, have reached the following understanding pursuant to Article 9 of the Agreement regarding the costs of obtaining and providing information in response to a request:

Costs

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

4. The competent authorities will consult not later than 12 months after the date the Agreement enters into force, and upon request of either competent authority thereafter, with respect to costs incurred or potentially to be incurred under the Agreement and with a view to minimising such costs.

Communications

Formal communications, including requests for information, made in connection with or pursuant to the provisions of the agreements entered into will be in writing directly to the competent authority of the other party at such address as may be notified by one party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the aforementioned competent authorities or their authorised representatives.

**For the competent authority of
The United Kingdom**

**For the competent authority of
Jersey**

Date:

Date: