

STATES OF JERSEY



RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE GOVERNMENT OF JERSEY AND THE GOVERNMENT OF LATVIA

**Lodged au Greffe on 11th February 2013
by the Chief Minister**

STATES GREFFE

PROPOSITION

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

to ratify the Agreement between the Government of Jersey and the Government of the Republic of Latvia on the exchange of information relating to tax matters, as set out in the Appendix to the report of the Chief Minister dated 30th January 2013.

CHIEF MINISTER

REPORT

Background

1. In February 2002, Jersey entered into a political commitment to support the OECD tax initiative on transparency and information exchange through the negotiation of tax information exchange agreements to an agreed international standard.
2. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which some 110 jurisdictions are now members, agreed a peer review process to assess compliance with the international standard. To oversee this process, a peer review group was set up chaired by France with 4 Vice-Chairs from India, Japan, Jersey and Singapore.
3. Successive G20 summits have encouraged jurisdictions to make progress in agreeing, implementing and abiding by the necessary international agreements for information exchange. In response Jersey has maintained an active programme of negotiating agreements with EU, OECD and G20 member jurisdictions. This has served to enhance the Island's international personality, and generally has helped to engender a more favourable view of the Island amongst the international community.
4. The international tax information exchange standard can be met through either a Tax Information Exchange Agreement (TIEA) or a Double Tax Agreement (DTA). The advantage of a DTA is that it offers benefits to individuals and the business community through the avoidance of double taxation or reduced rates of withholding tax, in addition to providing for exchange of information to the international standard. However, the majority of jurisdictions with whom the island has sought to negotiate an agreement have not been prepared to consider a DTA on the grounds that they would derive little, if any, benefit from such an agreement because Jersey is a zero-tax jurisdiction.
5. The latest position in respect of the programme of negotiating tax agreements is attached as an Appendix to this Report. A total of 31 TIEAs and 7 DTAs have now been signed of which 24 TIEAs and 3 DTAs are in force. Almost without exception the delay in bringing agreements into force is due to the length of time taken by the other parties to the agreements to complete their domestic procedures for the ratification of the Agreements.
6. As a Vice-Chair of the Global Forum Peer Review Group, Jersey has been determined to lead by example, and has attached particular importance to entering into agreements with the EU, OECD and G20 member jurisdictions. Agreements have been signed, or negotiations have been completed or are well advanced, with 25 of the 27 EU member states, 33 of the 34 OECD members and 17 of the 19 G20 countries (the 20th member of the G20 is the European Union).
7. Jersey is party to the Peer Review process of assessment of compliance with the international standards, and a report of the assessment of Jersey was published at the end of October 2011. The review concluded that Jersey's domestic laws provide a satisfactory framework for the exchange of relevant

information. The assessors said “overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible... Jersey practices to date have demonstrated a responsive and co-operative approach”

The Agreement with the Government of the Republic of Latvia

8. The Agreement entered into with the Government of the Republic of Latvia (“the Agreement”) is a continuation of the ongoing programme of entering into tax agreements to the international standard with EU, OECD and G20 member jurisdictions. Latvia is a member of the EU and agreements now signed with EU Member States total 14.
9. The Agreement is attached as an Appendix to this Report. The Agreement is in line with the OECD Model TIEA and provides for the exchange of information on tax matters on request. It is consistent with agreements signed previously with other jurisdictions and which the States have ratified.
10. Great importance is attached to maintaining a good relationship with the EU Member States and this Agreement is seen as a significant further strengthening of that relationship which will help to facilitate greater market access.

Procedure for signing and ratifying the Agreement

11. The Jersey signing of the Agreement was undertaken by the Assistant Chief Minister with responsibility for external relations in London in the presence of the Latvian Ambassador on the 28th January 2013. The signing was in accordance with the provisions of Article 18(2) of the States of Jersey Law 2005 and paragraph 1.8.5 of the Strategic Plan 2006-2011 adopted by the States on the 28th June 2006. The Council of Ministers has authorised the Chief Minister to delegate the Assistant Chief Minister or the Minister for Treasury and Resources to sign on behalf of the Government of Jersey.
12. The Agreement is now being presented to the States for ratification, following which it will be published and entered into the official record. The Agreement will enter into force when the domestic procedures of both parties have been completed.
13. The States on the 29th January 2008 adopted the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. The Schedule to these Regulations lists the third countries, and includes the taxes covered by the Agreements being entered into. The necessary Regulations to provide for the inclusion in the Schedule of the Republic of Latvia, and the relevant taxes covered, are being separately presented to the States for adoption.

Financial and manpower implications

14. There are no implications expected for the financial and manpower resources of the States arising from the ratification and implementation of the Agreement.

30th January 2013

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

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

Whereas the Government of Jersey and the Government of the Republic of Latvia wish to facilitate the exchange of information with respect to taxes;

Now, therefore, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Government of Jersey and the Government of the Republic of Latvia only:

Article 1
Object and Scope of the Agreement

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

Article 2
Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of or 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 Contracting Parties:

- a) in the case of Jersey:
 - (i) the income tax;
 - (ii) the goods and services tax;
- b) in the case of Latvia:
 - (i) the enterprise income tax (uznemumu ienakuma nodoklis);
 - (ii) the micro-enterprise income tax (mikrouzņemumu ienakuma nodoklis);
 - (iii) the personal income tax (iedzīvotāju ienakuma nodoklis);

- (iv) the immovable property tax (nekustama ipasuma nodoklis);
- (v) the value added tax (pievienotas vertibas nodoklis).

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other in writing of any substantial changes in their laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

Article 4 **Definitions**

1. In this Agreement:
 - a) the term "Jersey" means the Bailiwick of Jersey, including its territorial sea in accordance with the provisions of international law and Jersey's domestic law and regulations;
 - b) the term "Latvia" means the Republic of Latvia and, when used in the geographical sense, means the territory of the Republic of Latvia and any other area adjacent to the territorial waters of the Republic of Latvia within which under the laws of Latvia and, in accordance with international law, the rights of Latvia may be exercised with respect to the sea bed and its sub-soil and their natural resources;
 - c) the term "Contracting Party" means Latvia or Jersey, as the context requires;
 - d) the term "competent authority" means:
 - (i) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
 - (ii) in the case of Latvia, the State Revenue Service or its authorised representative, except that, where Latvia is the requesting Party, the Prosecutor General or its authorised representative may act as the competent authority in respect of criminal tax matters;
 - e) the term "person" includes an individual, a company and any other body or group of persons;
 - f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “requesting Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement, document or other record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- q) the term “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.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, 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 competent authority of the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party should only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, 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, that Party shall use appropriate information gathering measures necessary to provide the competent authority of the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

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

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 and in accordance with Article 2 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) information regarding the legal and beneficial ownership of companies, partnerships, public collective investment

schemes, trusts, foundations and other persons, including information on all such persons in an ownership chain, in particular:

- (i) in the case of public collective investment funds or schemes, information on shares, units and other interests;
- (ii) in the case of foundations, information on founders, members of the foundation council and beneficiaries;
- (iii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
- (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, information equivalent to the information in subparagraphs (i) to (iii).

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

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

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in sub-paragraph a) of this paragraph;
- f) grounds for believing that the information requested is held in the requested Party or is in the possession of, under the control 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, in the control 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 difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and

shall use its best endeavours to forward the requested information to the requesting Party as soon as possible.

Article 6 **Tax Examinations Abroad**

1. 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 enter its territory to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the 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 be present at a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 of this Article 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 official designated 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, where:
 - a) the request is not made in conformity with this Agreement;
 - b) the disclosure of the information requested would be contrary to public policy (ordre public).
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 paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.
3. In no case shall the provisions of this Agreement be construed so as to impose on a Contracting Party the obligation to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Contracting Party.
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.
6. In no case shall the provisions of this Article be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 8
Confidentiality

1. All information received by the competent authority of a Contracting Party shall be treated as confidential in the same manner as information obtained under the domestic laws of that Party.

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

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

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

Article 9 Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party. Extraordinary costs in providing assistance, including costs

in engaging external advisers (in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult periodically with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party if the costs of providing information with respect to a specific request are expected to be significant.

Article 10 Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1 of this Article, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

3. The Contracting Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of this Agreement will be in writing directly to the competent authority of the other Contracting Party at such address as may be notified by one Contracting Party to the other. 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 authorized representatives.

Article 11 Entry into Force

1. The Contracting Parties shall notify each other in writing that their legal requirements for the entry into force of this Agreement have been complied with. This Agreement shall enter into force on the first day of the third month following the receipt of the later of these notifications.

2. Upon the date of entry into force, this Agreement 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, to charges to tax arising on or after that date.

Article 12 Termination

1. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of period of three months after the date of receipt of the notice of termination by the other Contracting Party.

2. All requests received by the Contracting Parties up to effective day of termination will be dealt in accordance with the terms of this Agreement.

3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 (confidentiality) with respect to any information obtained under the Agreement

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the Agreement.

Done in duplicate at London this 28th day of January 2013, in the English language.

For the Government
of Jersey

Philip Barthelemy

For the Government of
the Republic of Latvia

[Signature]

