

# **STATES OF JERSEY**



## **RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE STATES OF JERSEY**

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**Lodged au Greffe on 4th November 2008  
by the Chief Minister**

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**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 Federal Republic of Germany and the States of Jersey as set out in the Appendix to the report of the Chief Minister dated 16th October 2008.

CHIEF MINISTER

## REPORT

### **Agreement to be entered into with the Federal Republic of Germany for the exchange of information relating to tax matters.**

1. The States are asked to ratify the signed Agreement to be entered into with the Federal Republic of Germany 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 an OECD tax initiative on transparency and information exchange through the negotiation of tax information exchange agreements with each of the OECD Member States. The commitment was subject to the condition that there was a level playing field embracing all OECD Member States, and the main competitor jurisdictions in the provision of financial services (Hong Kong China, Luxembourg, Singapore and Switzerland), two of which are also OECD Member States.
3. A totally level playing field is not in immediate prospect. At the same time Jersey remains fully committed to the principles of transparency and effective exchange of information. This conflict has been resolved by requiring an economic benefits package when negotiating tax information exchange agreements with individual OECD Member States, a package that is expected to be sufficient to offset any "costs" that are expected to be incurred in going ahead of the creation of the desired level playing field.
4. 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 at 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-co-operative jurisdictions, including Luxembourg and Switzerland, who may otherwise be gaining advantage from that position.
5. The Council of Ministers recognises that the signing of tax information exchange agreements is of concern to the finance industry because of the absence of a totally level playing field, the wish to see concrete offsetting economic benefits, and the evidence of business being lost to Switzerland and other less co-operative financial centres. However, while recognising the force of these arguments, and taking them fully into account through a consultative process with industry in advance of any further agreements being entered into, it is believed that improving the political and economic relationship with individual countries, such as the Federal Republic of Germany, can be in the Island's best long-term interests. Support is being obtained thereby when matters affecting the Island are being considered within international fora. It is also considered that, with the improved economic and political relationship, there will be a progressive removal of key barriers to market access.
6. The Council of Ministers see the issue 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-co-operative 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 co-operative jurisdiction.
7. 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 interest 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.
  8. The States on 29th January 2008 adopted the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. These Regulations were adopted to enable the States to fulfil its obligations to the Kingdom of the Netherlands under an Agreement for the exchange of information relating to tax matters entered into on 20th June 2007. The Schedule to these Regulations listed the Netherlands as a Third Country. As further Agreements are entered into, the 2008 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 Federal Republic of Germany 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 Federal Republic (P.172/2008).
  9. The Agreements do not come into force until both of the Parties concerned have completed their own domestic procedures. To address the fact that there will be differences in timing in the completion of the respective procedures, provision is being made for the Chief Minister to amend the Regulations by Order to specify the date when an agreement is to come into force. The date will be included in a fourth column in the Schedule attached to the Regulations.
  10. With the adoption of the Regulations to provide for the inclusion in the Schedule of the Federal Republic of Germany (P.172/2008) the opportunity is being taken to include in the fourth column in the Schedule the date of 1st March 2008 when the agreement for the exchange of information relating to tax matter with the Kingdom of the Netherlands came into force.

#### **Agreement with the Federal Republic of Germany**

11. The negotiations with the Federal Republic of Germany produced agreement on the following, attached as an Appendix to this report –
  - (a) a tax information exchange agreement which is consistent with that signed with the United States of America in 2002 and that signed with the Kingdom of the Netherlands in 2007, both of which have been ratified by the States.

The Agreement provides for the exchange of information on taxation on request, however that request has to be formulated in writing with the greatest detail possible. There can be no "fishing expedition". The Agreement will come into force only once the States have ratified the Agreement and approved the necessary Regulations, and the Federal Republic of Germany has completed its own domestic procedures.

Attached to the Agreement is a protocol which refers to data protection (a specific German requirement not matched in other agreements but one with which the Jersey Data Protection Commission is comfortable) and to the arrangements for the allocation of the “costs” incurred in responding to an information request. In the case of the USA and the Netherlands, the cost recovery arrangements were dealt with in a separate exchange of letters, but were in the same terms as the German Protocol;

- (b) an agreement on co-operation in tax matters and the avoidance of double taxation with respect to certain items of income.

This agreement provides for –

- occupation pensions to be taxable only in the country of residence of the recipient;
- payments made to students for their maintenance, education and training to be free of tax;
- the profits of associated enterprises to be treated as if they had been independent enterprises;

- (c) a Political Declaration.

Accompanying the tax agreements is a joint Political Declaration which includes statements to the effect that –

- following the entry into force of the agreements, Germany and Jersey will continue the dialogue to examine what measures could be adopted to further enhance and broaden their political and economic relationship including the further clarification of elements of double taxation, discrimination and other undesired tax barriers and the further extension of the arrangements for information exchange;
- an assurance by Germany that Jersey will be fully and equally treated by the German authorities in common with other countries included in what is described as the community of nations committed to international co-operation and information exchange on tax matters;
- Germany recognises Jersey’s commitment to comply with the international standards of money laundering, terrorist financing and financial regulation;
- subject to the outcome of the IMF review, Germany 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 assessments of equivalence in compliance with EU standards and access to EU markets, Jersey will be treated as fairly and favourably as other Third Countries.

12. The negotiation of the agreements has helped to establish a good relationship with officials in the Ministry of Finance of the Federal Republic of Germany, and has helped improve their understanding of and influence favourably their attitude towards the Island. The agreements are 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. As noted above, there will be a continuing dialogue regarding elements of double taxation, discrimination and other undesired tax barriers, and this is a matter to which the finance industry attaches particular importance.

13. There are no implications for the financial or manpower resources of the States arising from the ratification and implementation of the agreements with the Federal Republic of Germany.

16th October 2008

Agreement  
between  
the Government of Jersey  
and  
the Government of  
the Federal Republic of Germany  
-  
for the Exchange of Information relating to Tax Matters

The Government of Jersey  
and  
the Government of the Federal Republic of Germany,  
hereinafter the “Contracting Parties” –

Whereas the Government of the Federal Republic of Germany and the Government of Jersey recognise that present legislation already provides for co-operation and the exchange of information in criminal tax matters;

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

Whereas it is acknowledged that the Government of Jersey under the terms of their Entrustment from the United Kingdom have 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 Federal Republic of Germany;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to all tax matters;

Whereas the Contracting Parties recognise that the following Agreement contains obligations on the part of the Contracting Parties only;

Have agreed as follows:



**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 respective 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 or prosecution of criminal tax matters. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable.

**Article 2**  
**Jurisdiction**

A requested Contracting Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

**Article 3**  
**Taxes Covered**

- (1) The taxes which are the subject of this Agreement are:
  - (a) in the case of the Federal Republic of Germany:

the income tax (Einkommensteuer),  
the corporation tax (Körperschaftsteuer),  
the trade tax (Gewerbesteuer),  
the capital tax (Vermögensteuer) and  
the inheritance tax (Erbschaftsteuer),  
including the supplements levied thereon;
  - (b) in the case of Jersey:

the income tax.
- (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 if the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**  
**Definitions**

- (1) For the purposes of this Agreement, unless otherwise defined:
  - (a) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force,
  - (b) “Jersey” when used in a geographical sense, means the Bailiwick of Jersey, including its territorial sea,
  - (c) “competent authority” means:

- (i) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power,
    - (ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative,
  - (d) “person” includes an individual, a company and any other body of persons,
  - (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
  - (f) “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,
  - (g) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
  - (h) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,
  - (i) “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,
  - (j) “tax” means any tax to which the Agreement applies,
  - (k) “requesting Contracting Party” means the Contracting Party requesting information,
  - (l) “requested Contracting Party” means the Contracting Party requested to provide information,
  - (m) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information,
  - (n) “information” means any fact, statement, document or record in any form whatever,
  - (o) “tax matters” means all tax matters including criminal tax matters,
  - (p) “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 Contracting Party,
  - (q) “criminal laws” means all criminal laws designated as such under the respective law of the Contracting Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.
- (2) Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

**Article 5**  
**Exchange of Information Upon Request**

- (1) The competent authority of the requested Contracting Party shall provide upon request by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Contracting Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Contracting Party if it had occurred in the territory of the requested Contracting Party. The competent authority of the requesting Contracting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in 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 Contracting Party is not sufficient to enable it to comply with the request for information, that Contracting Party shall use at its own discretion all applicable information gathering measures necessary to provide the requesting Contracting Party with the information requested, notwithstanding that the requested Contracting Party may not, at that time, need such information for its own tax purposes.
- (3) If specifically requested by the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall provide information under this Article, to the extent allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.
- (4) Each Contracting Party shall ensure that its competent authorities, in accordance with the terms of this 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)
    - (i) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests;
    - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries,

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 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 sought and the form in which the requesting Contracting 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 the

administration and enforcement of the tax law of the requesting Contracting Party, with respect to the person identified in subparagraph (a) of this paragraph,

- (f) grounds for believing that the information requested is held in the requested Contracting Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Contracting Party,
  - (g) to the extent known, the name and address of any person believed to be in possession of the requested information,
  - (h) a statement that the request conforms with the laws and administrative practice of the requesting Contracting Party and that the information would be obtainable by the requesting Contracting Party under its laws or in the normal course of administrative practice in response to a valid request made in similar circumstances from the requested Contracting Party under this Agreement,
  - (i) a statement that the requesting Contracting 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 Contracting Party shall acknowledge receipt of the request to the competent authority of the requesting Contracting Party and shall use its best endeavours to forward the requested information to the requesting Contracting Party with the least reasonable delay.

#### **Article 6 Tax Examinations Abroad**

- (1) By reasonable notice given in advance, the requesting Contracting Parties may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party, to the extent permitted under its 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 Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the individuals concerned.
- (2) At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Contracting Party to be present at the appropriate part of a tax examination in the second-mentioned Contracting Party.
- (3) If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting Party about 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 first-mentioned Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting Party conducting the examination.

#### **Article 7 Possibility of Declining a Request**

- (1) The competent authority of the requested Contracting Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;

- (b) where the requesting Contracting 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 the public policy of the requested Contracting Party.
- (2) This Agreement shall not impose upon a requested Contracting Party any obligation:
- (a) to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or
  - (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5.
- (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 Contracting Party shall not be required to obtain and provide information which the requesting Contracting Party would be unable to obtain under its own laws or in the normal course of administrative practice in response to a valid request made in similar circumstances from the requested Contracting Party under this Agreement.
- (5) The requested Contracting Party may decline a request for information if the information is requested by the requesting Contracting Party to administer or enforce a provision of the tax law of the requesting Contracting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Contracting Party as compared with the citizen of the requesting Contracting Party in the same circumstances.

## **Article 8 Confidentiality**

- (1) All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.
- (2) Such 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) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Contracting Party.
- (4) The information provided to a requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction.
- (5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

## **Article 9 Costs**

The requesting Contracting Party shall reimburse the requested Contracting Party for all direct costs incurred in providing information pursuant to this Agreement. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Contracting Party shall consult with the competent authority of the requesting Contracting 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 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 Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
- (3) The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
- (4) The Contracting Parties shall agree on procedures for dispute resolution should this become necessary.

#### **Article 11 Protocol**

The attached Protocol shall be an integral part of this Agreement.

#### **Article 12 Entry into Force**

- (1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
- (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 paragraph 1 on that date, but only in respect of taxable period: beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

#### **Article 13 Termination**

- (1) Either Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.
- (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 competent authority of the other Contracting Party.
- (3) If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8

with respect to any information obtained under the Agreement.

Done at Berlin, this fourth day of July, 2008, in duplicate, in the English and German languages, each text being equally authentic.

For the Government  
of Jersey

For the Government  
of the Federal Republic of Germany

Protocol  
to the Agreement  
between  
the Government of Jersey  
and  
the Government of the Federal Republic of Germany  
for the Exchange of Information relating to Tax Matters

The Government of Jersey and the Government of the Federal Republic of Germany have agreed at the signing of the Agreement between the two Governments for the Exchange of Information relating to Tax Matters on the following provisions which shall form an integral part of the said Agreement:

1. In sub-paragraph (a) of paragraph 2 of Article 7 reference to legal privilege shall be interpreted as to include legal privilege which is established by the Courts based on settled case law.
2. With respect to paragraph 5 of Article 8 the Contracting Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply:
  - (a) The receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency; such use is also permitted, subject to the written consent required under paragraph 3 of Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
  - (b) The receiving agency shall on request inform the supplying agency about the use of the supplied data and the results achieved thereby;
  - (c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying agency;
  - (d) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under the law of the supplying Contracting Party shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay;
  - (e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the law of the Contracting Party in whose sovereign territory the application for the information is made;
  - (f) The receiving agency shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the supply of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead in its defence that the damage had been caused by the supplying agency. If the receiving agency pays compensation for damages as a result of the use of incorrect data supplied, the supplying agency shall refund to the receiving agency the total amount of the compensation paid;



- (g) If the law applicable to the supplying agency provided, with respect to the personal data supplied, for erasure within a certain period of time that agency shall inform the receiving agency accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
- (h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data;
- (i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

3. In Article 9 the term “direct” costs shall be interpreted as follows:-

- (a) examples of the ‘direct costs’ include, but are not limited to, the following:-
  - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the requesting Contracting Party;
  - (ii) reasonable fees imposed by a financial institution or other third Contracting 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, on the person who voluntarily appears in Jersey or the Federal Republic of Germany for 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 Contracting Party, for litigation in the courts of the requested Contracting Party related to a specific request for information.
- (b) ‘Direct costs’ do not include ordinary administrative and overhead expenses incurred by the requested Contracting Party in reviewing and responding to information requests submitted by the requesting Contracting Party.
- (c) If the direct costs pertaining to a specific request are expected to exceed 500 Euros or the sterling equivalent, the competent authority of the requested Contracting Party shall contact the competent authority of the requesting Contracting Party to determine whether the requesting Contracting Party wants to pursue the request and bear the costs.
- (d) The competent authorities shall consult not later than twelve months after the date the Agreement enters into force, and upon request of either competent authority thereafter, with respect to the costs incurred or potentially to be incurred under the Agreement and with a view to minimising such costs.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting 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 earlier mentioned competent authorities or their authorised entities.

Competent Authority  
for the Federal Republic of Germany:

Competent Authority  
for Jersey:

Bundeszentralamt für Steuern  
53221 Bonn

The Minister for Treasury and  
Resources  
PO Box 353  
Cyril Le Marquand House  
The Parade  
St. Helier  
JE4 8UL

In respect of criminal tax matters:

In respect of criminal tax matters:

Bundesamt für Justiz  
53094 Bonn

The above-mentioned authority.

Agreement

between

the Government of Jersey

and

the Government of

the Federal Republic of Germany

-  
on Co-operation in Tax Matters

and the Avoidance of Double Taxation with respect to certain Items of Income

The Government of Jersey

and

the Government of the Federal Republic of Germany,

Desiring to promote their mutual economic relations by removing fiscal obstacles and to strengthen their co-operation in tax matters,

Have agreed as follows:

**Article 1**  
**Persons covered**

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

**Article 2**  
**Taxes Covered**

1. This Agreement shall apply to taxes on income.
2. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in the case of the Federal Republic of Germany:

the income tax (Einkommensteuer),  
the corporation tax (Körperschaftsteuer) and  
the trade tax (Gewerbesteuer),  
including the supplements levied thereon;
  - (b) in the case of Jersey:

the income tax.
3. The Agreement shall apply also to any identical or substantially similar taxes that are 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 of any significant changes that have been made in their respective taxation laws.

**Article 3**  
**Income Covered**

This Agreement shall apply to items of income dealt with in Articles 6 to 8.

**Article 4**  
**General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) “Contracting Party” and “the other Contracting Party” mean the Government of Jersey or the Government of the Federal Republic of Germany, as the context requires;
  - (b) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
  - (c) “Jersey” when used in a geographical sense, means the Bailiwick of Jersey, including its territorial sea;
  - (d) “competent authority” means:
    - (i) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power,
    - (ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
  - (e) “person” includes an individual, a company and any other body of persons;
  - (f) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (g) “enterprise” applies to the carrying on of any business;
  - (h) “business” includes the performance of professional services and of other activities of an independent character;
  - (i) “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party or an enterprise carried on by a resident of the other Contracting Party.
2. As regards the application of the 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 Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **Article 5 Residence**

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the territory of that Contracting Party in respect only of income from sources in that Contracting Party or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);

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

## **Article 6 Pensions and Annuities**

1. Pensions and other similar remuneration in consideration of past employment or annuities paid to a resident of a Contracting Party shall be taxable only by that Contracting Party.
2. Notwithstanding the provisions of paragraph 1, pensions and other remuneration paid under the social security legislation of a Contracting Party shall be taxable only by that Contracting Party.
3. Any pension paid by, or out of funds created by, a Contracting Party, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that Contracting Party to an individual in respect of services rendered to that Contracting Party, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only by that Contracting Party.
4. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting Parties or a political subdivision thereof to a person resident in the other Contracting Party as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, vaccination or a similar event shall be taxable only by the first-mentioned Contracting Party.
5. The term “annuities” means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

## **Article 7 Students**

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

## **Article 8 Associated Enterprises**

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason

of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party intends to adjust the profits of an enterprise in accordance with the principles set out in paragraph 1, it shall inform the enterprise of the intended action in good time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Contracting Party. However, the right of the Contracting Party providing such information to make the proposed adjustment shall not be thereby affected.

### **Article 9 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting Parties will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the law of the Contracting Party concerned, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years of the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the law of the Contracting Parties.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
4. The competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 8 one of the enterprises concerned is liable to a serious penalty. In addition, the competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure if the enterprise has not fulfilled the documentation and/or information requirements of the adjusting Contracting Party before the assessment in which the adjustment is incorporated was finalized.
5. The Contracting Parties may also agree on other forms of dispute resolution including arbitration.
6. The competent authorities of the Contracting Parties may modify or supplement the above rules and procedures as necessary to more effectively implement their intent.
7. If, in carrying out the provisions of this Article, personal data shall be exchanged, the provisions of paragraph 2 of the Protocol to the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information relating to Tax Matters shall apply.

### **Article 10 Entry into Force**

1. This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. The provisions of this Agreement shall have effect:
  - (a) in respect of taxes levied for periods beginning on or after the first day of January of the calendar

year next following that in which the Agreement entered into force,

- (b) in respect of proceedings referred to in paragraph 1 of Article 9 which are initiated after its entry into force.
- 3. Notwithstanding paragraph 1 and paragraph 2 of this Article, the Agreement shall only enter into force when the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information relating to Tax Matters shall have effect.

### **Article 11 Termination**

- 1. This Agreement is concluded for a period of five years. Six months before the expiry of that period, the Contracting Parties will meet to decide on the extension of this Agreement and any other relevant measure.
- 2. Notwithstanding paragraph 1, this Agreement shall be terminated, without need of notice of termination on the date of termination of the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information in Tax Matters.

Done at Berlin in duplicate this fourth day of July, 2008, in the English and German languages, each text being equally authentic.

For the Government  
of Jersey

For the Government  
of the Federal Republic of Germany



## POLITICAL DECLARATION

Today, The Government of Jersey and The Government of the Federal Republic of Germany have signed Agreements on the Exchange of Information in Tax Matters and on Co-operation in Taxation Matters and the Avoidance of Double Taxation concerning certain Items of Income. The Agreement on the Exchange of Information in Tax Matters authorises each Party to request from the other information relating to a specific tax matter under examination or investigation. The Agreement confirms the commitment of both Parties to open and fair tax competition, and in particular to implement the high standards of transparency and exchange of information for tax purposes that have been reflected in the Model Agreement on Exchange of Information on Tax matters as released by the Organisation for Economic Cooperation and Development (OECD) in April 2002. The Agreement is also an important step forward in the global effort towards an international financial system that is free of distortions created through lack of transparency and lack of effective exchange of information in tax matters. The Agreement on Co-operation in Taxation Matters and the Avoidance of Double Taxation attends to certain items of income of individuals as well as to the adjustment of Profits of Associated Enterprises.

Following the entry into force of these Agreements, Jersey and Germany will continue the dialogue to examine what measures could be adopted to further enhance and broaden their political and economic relationship including the further clarification of elements of double taxation, discrimination and other undesired tax barriers and the further extension of the arrangements for information exchange.

The Federal Republic of Germany welcomes Jersey as a member of the community of nations committed to international co-operation and information exchange on tax matters, and wishes to assure The Government of Jersey that Jersey will be fully and equally treated as such by the German authorities. The Federal Republic of Germany also recognises The Government of Jersey's commitment to a "good neighbour" policy, reflected, inter alia, in the signing by The Government of Jersey of an Agreement on the Taxation of Savings Income with The Federal Republic of Germany and each of the other EU Member States.

Jersey and The Federal Republic of Germany through the signing of these Agreements seek to strengthen and broaden their current economic and trading relationship. Both Parties recognise the other's commitment to comply with international standards of money laundering, terrorist financing and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Federal Republic of Germany is pleased to note that in 2003 the IMF found that the financial regulatory and supervisory system of Jersey generally complies well with international AML/CFT standards upon which independent assessments of equivalence were able to be based. The Federal Republic of Germany is also pleased to note that Jersey has invited the IMF to undertake a further evaluation to assess compliance with the current international standards. Subject to the outcome of this IMF evaluation, the Federal Republic of Germany 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 assessments of equivalence in compliance with EU standards and access to EU markets, Jersey is treated as fairly and favourably as other Third Countries.

Berlin, 4 July 2008

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- For the Government  
of Jersey

For the Government  
of the Federal Republic of Germany