

# 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 THE ARGENTINE REPUBLIC**

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**Lodged au Greffe on 10th August 2011  
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 Government of Jersey and the Government of the Argentine Republic as set out in the Appendix to the Report of the Chief Minister dated 9th August 2011.

CHIEF MINISTER

## **REPORT**

### **Agreement to be entered into with the Argentine Republic 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 Argentine Republic 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 to an agreed international standard.
3. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which more than 100 jurisdictions are 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, Singapore and Jersey.
4. 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.
5. The latest position in respect of the programme of negotiating tax information exchange agreements is attached as an Appendix to this report. A total of 24 tax information exchange agreements (TIEAs) and 2 double taxation agreements (DTAs) have now been signed, of which 15 TIEAs and one DTA are in force. 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 on tax information exchange with G20 countries. Jersey has now signed, initialled or completed negotiation with 17 of the 19 G20 countries (the other member of the G20 is the European Union).
7. Jersey has been party to the peer review process to assess compliance with international standards, and a report on the assessment of Jersey is due to be published shortly.
8. The policy of negotiating TIEAs or DTAs is supported by the finance industry. The preference of government and the industry is for a DTA but the majority of jurisdictions with whom negotiations have been undertaken have not been prepared to consider a DTA on the grounds that they believe they would derive little if any benefit from such an agreement.

### **The Agreement with the Argentine Republic**

9. The Tax Information Exchange Agreement entered into with the Argentine Republic is a continuation of the ongoing programme of signing tax agreements with G20 countries.
10. Attached as an Appendix to this report is –
  - (a) the Tax Information Exchange Agreement, which is consistent with agreements signed previously with other countries and which the States have ratified. The Agreement provides for the exchange of information on tax matters on request;
  - (b) a letter from the Argentine Minister of the Economy to the Minister for Treasury and Resources expressing the commitment to remove Jersey from all relevant Argentine “black lists” once the Agreement is in force and there is strong evidence of its effective application;

### **Procedure for Signing and Ratifying the TIEA**

11. The Agreement with the Argentine Republic was signed by the Assistant Chief Minister, UK and International Relations, on the 28th July 2011 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 authorised the Assistant Chief Minister 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 come into force once Jersey has notified the Argentine Republic of its ratification. The ratification procedures for the Argentine Republic were completed with the signing of the Agreement.
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. As further agreements are entered into, the Regulations are amended to include in the schedule the jurisdiction and the taxes concerned. The necessary Regulations to provide for the inclusion in the Schedule of the Argentine Republic and the relevant taxes will be presented to the States for adoption on due course subsequent to the ratification of the Agreement.

### **Financial and Manpower Implications**

14. There are no implications for the financial or manpower resources of the States arising from the ratification and implementation of the Agreement with the Argentine Republic.

9th August 2011

**AGREEMENT  
BETWEEN  
JERSEY  
AND  
THE ARGENTINE REPUBLIC  
ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

Whereas Jersey and the Argentine Republic (hereinafter referred to as “the Parties”) wish to enhance and facilitate the exchange of information relating to taxes;

Whereas it is acknowledged that Jersey has the right under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland to negotiate, conclude, perform and subject to the terms of this Agreement terminate a Tax Information Exchange Agreement with the Argentine Republic;

NOW, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties.

**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 and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, enforcement, collection or recovery of such taxes, with respect to persons subject to taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

**Article 2  
Jurisdiction**

To enable the scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the Competent Authority of the Requested Party without regard to whether the person to whom the information relates

is, or whether the information is held by, a resident or national of a Party. A Requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of, or in the control 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 Argentine Republic:

- (i) Income Tax;
- (ii) Value Added Tax,
- (iii) Personal Assets Tax; and
- (iv) Tax on Presumptive Minimum Income.

b) in Jersey:

- (i) the Income Tax;
- (ii) the goods and services tax.

2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Parties. The Competent Authorities of each Party shall notify the other of substantial changes in laws or measures which may affect the obligation of that Party pursuant to this Agreement.

### **Article 4 Definitions**

1. For the purposes of this Agreement:

(a) "Competent Authority" means

(i) in the case of the Argentine Republic, the Head of the Federal Administration of Public Revenues or his authorized representatives;

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

(b) "person" means an individual, a company or any other body, group of persons or patrimony subject to tax responsibility pursuant to the laws of each Contracting Party;

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

(d) “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;

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

(f) “recognised stock exchange” means any stock exchange agreed upon by the Competent Authorities of the Parties;

(g) “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;

(h) “tax” means any tax to which the Agreement applies;

(i) “Requesting Party” means the Party requesting information;

(j) “Requested Party” means the Party requested to provide information;

(k) “information gathering measures” means rules and administrative or judicial procedures that enable a Party to obtain and provide the requested information;

(l) “information” means any fact, statement, document or record in any form whatever, relevant to tax administration and enforcement of taxes covered in this Agreement;

(m) “criminal tax matters” means tax matters involving an intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;

(n) “Criminal Law” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

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, and 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 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 such conduct 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 its 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 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) (i) information regarding the ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain;

(ii) in the case of trusts, information on settlors, trustees and beneficiaries;

(iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and

(iv) in the case of collective investment schemes, information on shares, units and other interests;

provided that this Agreement does not create an obligation on either Party 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 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 subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is held by the Requested Party or is in the possession of or obtainable by a person within the territorial jurisdiction of the Requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession of or in the control of or able to obtain the requested information;
- (h) a statement that the request is in conformity with the laws 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 with the least reasonable delay.

7. Requests shall be submitted in writing in the official language of the country receiving such request -in the case of Argentina: Spanish language or in the case of Jersey: English language-, and may be made by electronic means.

**Article 6**  
**Presence of Officials of a Party**  
**in the Territory of The Other Party**

1. The Requested Party may allow representatives of the Competent Authority of the Requesting Party to enter the territory of the Requested Party, 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 notify 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 one Party, the competent authority of the other Party may allow representatives of the Competent Authority of the first-mentioned Party to be present at the appropriate part of a tax examination in second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the Competent Authority of the Party conducting the examination shall, as soon as possible, notify the Competent Authority of the other 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 Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

**Article 7**  
**Restrictions on the Exchange of Information**

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 ("ordre public").
2. This Agreement shall not impose upon a Party any obligation to provide items subject to legal privilege as provided for under the domestic law of the relevant Party, or any trade, business, industrial, commercial or professional secret or trade process or would violate personal data protection, if any. Notwithstanding the foregoing, the information described in Article 5 (4) shall not be considered as such a secret or trade process merely because it meets the criteria set forth in that paragraph.

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 or provide information which the Requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the Requested Party under this Agreement.
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 of the Requested Party as compared with a national 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, in the same conditions as that obtained under its domestic laws or according to the confidentiality conditions applicable in the jurisdiction of the State that provides such information if the second-mentioned conditions are more restrictive.
2. Information provided to the Competent Authority of the Requesting Party may not be used for any purpose other than the purposes stated in Article 1 without the prior written consent of the Requested Party.
3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) 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.
4. The 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, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary 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 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 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 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 the purposes of reaching agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution should this become necessary.

**Article 11**  
**Entry into Force**

1. This Agreement is subject to ratification, acceptance or approval by the Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.
2. The Agreement shall enter into force 30 days after receipt of written notification by the later Party of completion of all legal formalities required for entry into force. Upon the day of entry into force, it 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. This Agreement shall remain in force until terminated by either Party.
2. Either Party may after its entry into force 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 a period of six 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.

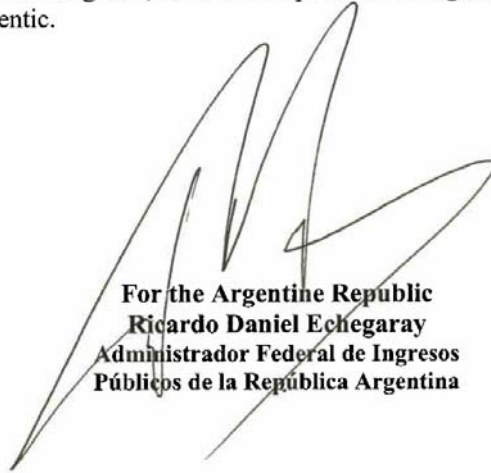
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, being duly authorised thereto have signed the Agreement.

DONE in London, on July 28th 2011, in two originals, each in the Spanish and English languages, both texts being equally authentic.



**For Jersey  
Senator Freddie Cohen  
Assistant Chief Minister  
UK and International Relations**



**For the Argentine Republic  
Ricardo Daniel Echegaray  
Administrador Federal de Ingresos  
Públicos de la República Argentina**

## STATES OF JERSEY

### A.TAX INFORMATION EXCHANGE AGREEMENTS (TIEAs)

#### 1. TIEAs signed

<u>Countries</u>	<u>Date Signed</u>	<u>Ratified by Jersey</u>	<u>Ratified by other Party</u>	<u>Entry into Force</u>
USA	Nov. 2002	May 2006	Nov. 2002	23rd May 2006
Netherlands	June 2007	Feb. 2008	Dec. 2007	1st March 2008
Germany	July 2008	Jan. 2009	July 2009	28th Aug. 2009
Sweden	Oct. 2008	March 2009	Nov. 2009	23rd Dec. 2009
Norway	Oct. 2008	March 2009	Sept. 2009	7th Oct. 2009
Iceland	Oct. 2008	March 2009	Oct. 2009	3rd Dec. 2009
Finland	Oct. 2008	March 2009	Dec. 2008	3rd Aug. 2009
Denmark	Oct. 2008	March 2009	March 2009	6th June 2009
Greenland	Oct. 2008	March 2009	March 2009	6th June 2009
Faroes	Oct. 2008	March 2009	June 2009	21st Aug. 2009
U.K.	March 2009	July 2009	Nov 2009	27nd Nov. 2009
France	March 2009	July 2009	July 2010	11th Oct. 2010
Ireland	March 2009	July 2009	April 2010	5th May 2010
Australia	June 2009	Nov. 2009	January 2010	5th Jan. 2010
New Zealand	July 2009	Nov. 2009	Sept. 2010	27nd Oct. 2010
Portugal	July 2010	Sept. 2010	March 2011	(2nd Half 2011)
People's Republic of China	Oct. 2010	Jan 2011	(2nd Half 2011)	(2nd Half 2011)
Turkey	Nov. 2010	Feb. 2011	(2nd Half 2011)	(2nd Half 2011)
Mexico	Nov. 2010	Feb. 2011	(2nd Half 2011)	(2nd Half 2011)
Canada	Jan. 2011	March 2011	(2nd Half 2011)	(2nd Half 2011)
Indonesia	April 2011	(July 2011)	(2nd Half 2011)	(2nd Half 2011)
Czech Republic	July 2011	(Sept. 2011)	(2nd Half 2011)	(2nd Half 2011)
South Africa	July 2011	(Sept. 2011)	(2nd Half 2011)	(2nd Half 2011)
Argentina	July 2011	(Sept. 2011)	July 2011	(2nd Half 2011)

**Note: dates in brackets are the expected dates based on latest information from the country concerned.**

#### 2. TIEAs initialled/agreed ready for signing:

- Brazil
- Greece
- India
- Italy
- Japan
- Poland
- Republic of Korea

#### 3. TIEAs where negotiations are well advanced with a draft agreement exchanged:

- Hungary
- Spain

**4. Jurisdictions contacted from which there has been a positive response and/or initial action has been taken:**

- Austria
- Luxembourg
- Hong Kong China
- Slovenia
- Switzerland

**5. Jurisdictions approached but from whom a formal response is awaited:**

- EU Member States:
  - Bulgaria
  - Cyprus
  - Latvia
  - Lithuania
  - Romania
  - Slovak Republic
- G20 Member States:
  - Saudi Arabia

**B. DOUBLE TAXATION AGREEMENTS(DTAs)**

**1. DTAs signed:**

- Malta –  
signed 25th January 2010  
ratified by Malta February 2010  
ratified by Jersey June 2010  
in force – 19th July 2010
- Estonia –  
signed 21st December 2010  
ratified by Jersey March 2011

**2. DTAs where negotiations have commenced:**

- Bahrain
- Belgium
- Qatar

**Enquiries concerning the above should be directed in the first instance to Colin Powell, Adviser – International Affairs in the Chief Minister’s Dept; tel: 44(0)1534 440414; email: c.powell@gov.je**

**Colin Powell  
Adviser – International Affairs**

29th July 2011