

STATES OF JERSEY



DRAFT TAXATION (AGREEMENTS WITH EUROPEAN UNION MEMBER STATES) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 7th June 2005
by the Policy and Resources Committee**

STATES GREFFE



Jersey

DRAFT TAXATION (AGREEMENTS WITH EUROPEAN UNION MEMBER STATES) (JERSEY) REGULATIONS 200-

REPORT

The States are asked to make the Taxation Agreements with European Union Member States (Jersey) Regulations 200-

The States on 22nd June 2004 adopted P.97/2004 and agreed –

- (a) to approve the 2 Model Agreements, as set out in the Appendix to the report of the Policy and Resources Committee dated 14th May 2004, as the basis of the Bilateral Agreements on Taxation of Savings Income to be entered into with each of the 25 Member States of the European Union;
- (b) to authorise the President of the Policy and Resources Committee to sign these Bilateral Agreements or any documents ancillary thereto on behalf of the Island; and
- (c) to charge the Policy and Resources Committee to prepare the necessary legislative changes to enable the implementation of these Agreements for consideration by the States.

The Taxation of Savings Income Agreements entered into with each of the 25 Member States of the European Union or documents ancillary thereto have been duly signed by the President of the Policy and Resources Committee on behalf of the Island in accordance with the approval given by the States. Each of the Agreements will be included in the official States' record so that it can be accessed readily by anyone interested. One example of the Agreements entered into is attached to this report.

To bring the Agreements into effect the States need to make Regulations in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004 which provides that “the States may by Regulations make such provision as appears to them to be necessary or expedient for the purposes of –

- (a) implementing an approved Agreement or approved obligation ...”

The Agreements that have been entered into mirror the Model Agreements approved by the States on 22nd June 2004. The Regulations in turn mirror the Agreements.

The interpretation of the Agreements by those affected will be assisted by Guidance Notes to be issued by the Policy and Resources Committee. These Guidance Notes have been the subject of extensive consultation of the finance industry, and have been drafted jointly with Guernsey and the Isle of Man.

The Regulations provide for the Agreements to enter into force on 1st July 2005. However, this will be subject to the provisions of Article 17 of the Agreements, and Article 18 of the Regulations, being met. That is, the Insula Authorities will need to be satisfied that the equivalent provisions are to be applied by the 25 Member States, by the 5 named third countries (Switzerland, Andorra, Liechtenstein, Monaco and San Marino) who have entered into an Agreement with the European Union, and the 9 other associated and dependent territories (Guernsey, Isle of Man, Anguilla, British Virgin Islands, Cayman Islands, Turks and Caicos Islands, Netherlands Antilles, Aruba and Montserrat) who have also entered into Bilateral Savings Agreements with the Member States.

Each of the Member States with whom the Island has entered into an Agreement will be providing formal notification of the fulfilment of their constitutional requirements for the entry into force of the agreements. In turn the Island Authorities will provide each Member State with similar written confirmation that Jersey has fulfilled its constitutional requirements.

With the making of the Regulations, the Agreements will be considered to have been formally ratified, subject to the provisions of Article 17 of the Agreements.

There are no implications for the financial or manpower resources of the States arising from these draft Regulations.

**AGREEMENT
IN THE FORM OF AN EXCHANGE OF LETTERS
ON THE TAXATION OF SAVINGS INCOME AND THE PROVISIONAL APPLICATION
THEREOF**

AT

A. Letter from the Republic of Austria

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Sir,

I have the honour to refer to the texts of respectively the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply automatic exchange of information” and the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply the withholding tax in the transitional period”, that resulted from the negotiations with the Island Authorities on a Savings Tax Agreement, and that were annexed, respectively as Annex I and Annex II, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (Doc. 7408/04 FISC 58).

In view of the above mentioned texts I have the honour to propose to you the “Agreement on the taxation of savings income” as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Agreement and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this “Agreement on the taxation of savings income”, I have the honour to propose to you that the Republic of Austria and Jersey apply this Agreement provisionally, within the framework of our respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/BC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the Republic of Austria and Jersey.

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

For the Republic of Austria

Done at Vienna, on 1st 06. 2004, in the English language in three copies.

A handwritten signature in black ink, appearing to read "Gregor Woschnigg". The signature is written in a cursive style with a large initial 'G' and a long, sweeping tail.

B. Letter from Jersey

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Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

“Sir,

I have the honour to refer to the texts of respectively the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU member State that is to apply automatic exchange of information” and the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU member State that is to apply the withholding tax in the transitional period”, that resulted from the negotiations with the Island Authorities on a Savings Tax Agreement, and that were annexed, respectively as Annex I and Annex II, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (Doc.7408/04 FISC 58).

In view of the above mentioned texts I have the honour to propose to you the “Agreement on the taxation of savings income” as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Agreement and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this “Agreement on the taxation of savings income”, I have the honour to propose to you that the Republic of Austria and Jersey apply this Agreement provisionally, within the framework of our respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.


I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the Republic of Austria and Jersey.

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

I am able to confirm that Jersey is in agreement with the contents of your letter.

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

For Jersey



President, Policy and Resources Committee

Done at St. Helier, on 19/11/04, in the English language in three copies.

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN JERSEY
AND THE REPUBLIC OF AUSTRIA

WHEREAS:

1. Article 17 of Directive 2003/48/EEC (“the Directive”) of the Council of the European Union (“the Council”) on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from 1 January 2005 provided that:
 - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
 - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”.
2. The relationship of Jersey with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol Jersey is not within the EU fiscal territory.
3. Jersey notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.
4. The “withholding tax” referred to in the Directive will be referred to as the “retention tax” in Jersey’s domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as “withholding/retention tax” and shall have the same meaning.
5. Jersey has agreed to apply a retention tax with effect from the 1 January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive,

and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement have generally been met.

6. Jersey has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive
7. Jersey has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

Jersey and the Republic of Austria hereinafter referred to as a “contracting party” or the “contracting parties” unless the context otherwise requires,

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

- (a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding/retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive;
- (c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding/retention tax levied under this Agreement;

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

For the purposes of this Agreement the term ‘competent authority’ when applied to the contracting parties means “der Bundesminister für Finanzen or an authorised representative” in respect of the Republic of Austria and “the Comptroller of Income Tax” in respect of Jersey.

Article 1 Withholding/Retention of Tax by Paying Agents

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

tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 2 Reporting of Information by Paying Agents

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

- (a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;
- (d) information concerning the interest payment specified in Article 4(1) of this Agreement. However each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

Article 3 Exceptions to the Withholding/Retention Tax Procedure

- (1) A contracting party when levying a withholding/retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:
 - (a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the withholding/retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
 - (b) a procedure which ensures that withholding/retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph (2) of this Article.

- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:
- (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
 - (b) the name and address of the paying agent;
 - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

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

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

Article 4 Basis of assessment for withholding/retention tax

- (1) A paying agent established in a contracting party shall levy withholding/retention tax in accordance with Article 1 of this Agreement as follows:
- (a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;
 - (b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
 - (c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
 - (d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the

amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

- (e) where a contracting party exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the withholding/retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.
- (3) The imposition of withholding/retention tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.
- (4) During the transitional period, the contracting party levying withholding/retention tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding/retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

Article 5 Definition of beneficial owner

- (1) For the purposes of this Agreement, “beneficial owner” shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:
 - (a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;
 - (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in Jersey, or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the

latter communicates such information to the competent authority of its contracting party of establishment;

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

Article 6 Identity and residence of beneficial owners

- (1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);
- (2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:
- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10 June 1991 in the case of the Republic of Austria or equivalent legislation in the case of Jersey on prevention of the use of the financial system for the purpose of money laundering;
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's

date and place of birth established on the basis of his passport or official identification card.

- (3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:
 - (a) for contractual relations entered into before 1 January 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of the Republic of Austria or equivalent legislation in the case of Jersey;
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

Article 7 Definition of paying agent

- (1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
- (2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:
 - (a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or

- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in Jersey.

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

- (3) the entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2) of this Article. The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in its territory.
- (4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.
- (5) The legal persons exempted from sub-paragraph (a) of paragraph 2 of this Article are:
 - (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
 - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 8 Definition of interest payment

- (1) For the purposes of this Agreement “interest payment” shall mean:
 - (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
 - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in

(a);

- (c) income deriving from interest payments either directly or through an entity referred to in Article 7 (2) of this Agreement, distributed by:
 - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
 - (ii) an equivalent undertaking for collective investment established in Jersey;
 - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Jersey.

- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC;
 - (ii) an equivalent undertaking for collective investment established in Jersey.
 - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Jersey.

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

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

- (3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

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

- (7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1 January 2011 be 25%.
- (8) The percentages referred to in paragraph 1(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 9 Withholding/Retention Tax Revenue sharing

- (1) A contracting party which applies withholding/retention tax shall retain 25% of the withholding/retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.
- (2) A contracting party levying withholding/retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.
- (4) A contracting party levying withholding/retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 10 Elimination of double taxation

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding/retention tax to which this Agreement refers in accordance with the following provisions:
 - (i) if interest received by a beneficial owner has been subject to withholding/retention tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;
 - (ii) if, in addition to the withholding/retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.
- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

Article 11 Transitional provisions for negotiable debt securities

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

- which contain gross up and early redemption clauses; and,
- where the paying agent as defined in Article 7 of this Agreement is established in a contracting party applying withholding/retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

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

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

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

Article 12 Mutual agreement procedure

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

Article 13 Confidentiality

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 14 Transitional Period

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

Article 15 Entry into force

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

Article 16 Termination

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

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

Article 17 Application and suspension of application

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.
- (3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

Done in the German and the English languages, all texts being equally authentic.

List of related entities referred to in Article 11

For the purposes of Article 11 of this Agreement, the following entities will be considered to be a “*related entity acting as a public authority or whose role is recognised by an international treaty*”:

ENTITIES WITHIN THE EUROPEAN UNION:**Belgium**

Vlaams Gewest (Flemish Region)
Région wallonne (Walloon Region)
Region bruxelloise/Brussels Gewest (Brussels Region)
Communauté française (French Community)
Vlaamse Gemeenschap (Flemish Community)
Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

Xunta de Galicia (Regional Executive of Galicia)
Junta de Andalucía (Regional Executive of Andalusia)
Junta de Extremadura (Regional Executive of Extremadura)
Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
Junta de Castilla- León (Regional Executive of Castilla- León)
Gobierno Foral de Navarra (Regional Government of Navarre)
Govern de les Illes Balears (Government of the Balearic Islands)
Generalitat de Catalunya (Autonomous Government of Catalonia)
Generalitat de Valencia (Autonomous Government of Valencia)
Diputación General de Aragón (Regional Council of Aragon)
Gobierno de las Islas Canarias (Government of the Canary Islands)
Gobierno de Murcia (Government of Murcia)
Gobierno de Madrid (Government of Madrid)
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
Diputación Foral de Alava (Regional Council of Alava)
Ayuntamiento de Madrid (City Council of Madrid)
Ayuntamiento de Barcelona (City Council of Barcelona)
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
Cabildo Insular de Tenerife (Island Council of Tenerife)
Instituto de Crédito Oficial (Public Credit Institution)

Instituto Catalán de Finanzas (Finance Institution of Catalonia)

Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

μ (National Telecommunications Organisation)

μ μ (National Railways Organisation)

μ μ (Public Electricity Company)

France

La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)

L'Agence française de développement (AFD) (French Development Agency)

Réseau Ferré de France (RFF) (French Rail Network)

Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)

Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)

Charbonnages de France (CDF) (French Coal Board)

Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

Italy

Regions

Provinces

Municipalities

Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

Pašvald bas (Local governments)

Poland

gminy (communes)

powiaty (districts)

województwa (provinces)

zwi zki gmin (associations of communes)

zwi zki powiatów (association of districts)

zwi zki województw (association of provinces)

miasto stołeczne Warszawa (capital city of Warsaw)

Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)

Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

Região Autónoma da Madeira (Autonomous Region of Madeira)

Região Autónoma dos Açores (Autonomous Region of Azores)

Municipalities

Slovakia

mestá a obce (municipalities)

Železnice Slovenskej republiky (Slovak Railway Company)

Štátny fond cestného hospodárstva (State Road Management Fund)

Slovenské elektrárne (Slovak Power Plants)

Vodohospodárska v stavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

European Bank for Reconstruction and Development

European Investment Bank

Asian Development Bank

African Development Bank

World Bank / IBRD / IMF

International Finance Corporation

Inter-American Development Bank

Council of Europe Social Development Fund

EURATOM

European Community

Corporación Andina de Fomento (CAF) (Andean Development Corporation)

Eurofima

European Coal & Steel Community

Nordic Investment Bank

Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD COUNTRIES:

The entities that meet the following criteria:

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

CONDITIONS FOR AMENDING THE PRESENT ANNEX:

The list of related entities in this Annex may be amended by mutual agreement.

Explanatory Note

These Regulations would implement the agreements that, in adopting P.97/2004, the States approved and authorised to be signed on behalf of Jersey. The provisions of the Regulations follow closely those of the agreements.

Regulation 1 is the interpretation provision.

Regulation 2 gives effect to Schedule 1. Schedule 1 lists the 25 Member States of the European Union with whom the agreements will be made (the contracting parties) and specifies who is the competent authority for each of those States.

Regulation 3 requires the Policy and Resources Committee (the “Committee”) to make an Order amending the Regulations or providing for their suspension or resumption in order to reflect the termination, suspension or resumption of an agreement with a contracting party. Articles 16 and 17 of the agreements provide for their termination, suspension and resumption.

Regulation 4 defines who is a “beneficial owner” for the purposes of the Regulations, being an individual who receives an interest payment. The definition reflects Article 5 of the agreements.

Regulation 5 defines what constitutes an “interest payment” for the purposes of the Regulations, in accordance with Article 8 of the agreements, and implements the transitional arrangements for negotiable debt securities in Article 11 of the agreements.

Regulation 6 defines who is a “paying agent” and who is a “Jersey paying agent” for the purposes of the Regulations, being an entity which makes an interest payment to a beneficial owner. The definition reflects Article 7 of the agreements and the exercise of the option described in Article 4 of the agreements.

Regulation 7 specifies how a Jersey paying agent is to obtain proof of identity of a beneficial owner to whom the Jersey paying agent pays interest.

Regulation 8 specifies how a Jersey paying agent is to establish the place of residence of the beneficial owner.

Regulations 7 and 8 give effect to Article 6 of the agreements.

Regulation 9 imposes the duty on a Jersey paying agent to deduct retention tax when making a payment of interest to a beneficial owner who is resident in the European Union. For the first 3 years, the rate of tax is 15%. For the next 3 years, the rate is 20%. After that, the rate increases to 35%. A paying agent must annually remit the taxes deducted to the Comptroller of Income Tax. In doing so, the paying agent is required only to notify the Comptroller of the Member State to which the tax must be transferred. The Finance and Economics Committee is empowered to make an Order specifying the currency in which the taxes deducted must be remitted to the Comptroller. This Regulation gives effect to Article 1 of the agreements.

Regulation 10 how the amount of an interest payment is to be calculated, in accordance with Article 4 of the agreements.

Regulation 11 provides that a Jersey paying agent shall not deduct retention tax if the beneficial owner has authorized the paying agent to disclose to the Comptroller of Income Tax the beneficial owner’s identity and the interest payments made to the beneficial owner.

Regulation 12 provides that a Jersey paying agent shall not deduct retention tax if the beneficial owner has produced a certificate issued by his or her contracting party of residence showing that the beneficial owner has disclosed the interest payments to the contracting party.

Regulations 11 and 12 give effect to Article 3 of the agreements.

Regulation 13 requires the Comptroller of Income Tax to transfer 75% of the retention tax that he or she receives to the contracting party in which the beneficial owner resides. The remaining 25% is credited to the general revenue of the States. The Regulation also requires the Comptroller to pass on information he or she receives under Regulation 11. Information either sent or received by the Comptroller cannot be used for purposes other than direct taxation unless the provider of the information consents. Information received by the Comptroller from one contracting party may be passed on to another contracting party, if the first contracting party consents. This reflects Articles 9 and 13 of the agreements.

Regulation 14 gives a beneficial owner resident in Jersey the right to a tax credit in Jersey in the event that the Jersey resident can prove that interest payments he or she has received in a contracting party have been subjected to withholding tax (equivalent to the retention tax) in that contracting party. This Regulation gives effect to Article 10 of the agreements.

Regulation 15 creates 2 offences. The offence of knowingly failing to comply with the Regulations is punishable by an unlimited fine. The offence of knowingly providing false information or a false document is punishable by up to 2 years' imprisonment and/or a fine up to level 4 on the standard scale (£5,000).

Regulation 16 makes the standard provision for aiders and abettors and offences committed by bodies corporate or limited liability partnerships.

Regulation 17 would amend these Regulations when the Committees of the States are abolished and replaced by Ministers. The power of the Policy and Resources Committee to make Orders under these Regulations would pass to the Chief Minister. The power of the Finance and Economics Committee to make an Order under these Regulations would pass to the Minister for Treasury and Resources.

Regulation 18 is the citation and commencement provision. The agreements require any implementing legislation to come into force at the same time as the agreements take effect. This is expected to be 1st July 2005. However, a power is taken for the Committee, by Order, to defer commencement in the event that the agreements do not take effect on that day.

Schedule 1 lists contracting parties and their competent authorities.

Schedule 2 lists recognized government-related entities who issue, or have issued, bonds and securities in other jurisdictions from March 2002 onwards. Transitional arrangements are made in Regulation 5 as to whether interest paid on such bonds or securities is subject to retention tax.



Jersey

DRAFT TAXATION (AGREEMENTS WITH EUROPEAN UNION MEMBER STATES) (JERSEY) REGULATIONS 200

Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Contracting party</u>
<u>3</u>	<u>Termination or suspension and resumption of agreement</u>
<u>4</u>	<u>“Beneficial owner” defined</u>
<u>5</u>	<u>“Interest payment” defined</u>
<u>6</u>	<u>“Paying agent” and “Jersey paying agent” defined</u>
<u>7</u>	<u>Duty of Jersey paying agent to identify beneficial owner</u>
<u>8</u>	<u>Duty of Jersey paying agent to establish residence of beneficial owner</u>
<u>9</u>	<u>Duty of Jersey paying agent to deduct and remit retention tax</u>
<u>10</u>	<u>Determination of amount of interest payment</u>
<u>11</u>	<u>Exception where beneficial owner authorizes reporting of interest payments</u>
<u>12</u>	<u>Exception where beneficial owner presents certificate</u>
<u>13</u>	<u>Duties of Comptroller of Income Tax</u>
<u>14</u>	<u>Right of beneficial owner resident in Jersey to tax credit</u>
<u>15</u>	<u>Offences</u>
<u>16</u>	<u>Offences: aiders, abettors, bodies corporate, etc.</u>
<u>17</u>	<u>Amendments consequential on move to ministerial government</u>
<u>18</u>	<u>Citation and commencement</u>

SCHEDULE 1

CONTRACTING PARTIES AND THEIR COMPETENT AUTHORITIES

SCHEDULE 2

RELATED ENTITY ACTING AS A PUBLIC AUTHORITY OR WHOSE ROLE IS RECOGNIZED BY AN INTERNATIONAL TREATY



Jersey

DRAFT TAXATION (AGREEMENTS WITH EUROPEAN UNION MEMBER STATES) (JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004, ^[1] and following the decision of the States of 22nd June 2004 to adopt Projet 97 of 2004, have made the following Regulations –

1 Interpretation

In these Regulations, unless the context otherwise requires –

“beneficial owner” shall have the meaning given in Regulation 4;

“Committee” means the Policy and Resources Committee;

“competent authority”, in relation to a contracting party, means the authority specified opposite that contracting party in column 2 of Schedule 1;

“contracting party” means a Member State of the European Union listed in column 1 of Schedule 1;

“interest payment” shall have the meaning given in Regulation 5;

“Jersey paying agent” shall have the meaning given in Regulation 6;

“paying agent” shall have the meaning given in Regulation 6;

“third country” means a country or territory other than Jersey or a contracting party;

“UCITS Directive” means Council Directive 85/611/EEC of 20th December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

2 Contracting party

- (1) Column 1 of Schedule 1 lists Member States of the European Union with whom an agreement implemented by these Regulations has been entered into pursuant to the decision of the States of 22nd June 2004 to adopt Projet 97 of 2004.
- (2) Column 2 of Schedule 1 specifies the competent authorities of the contracting parties.
- (3) The Committee may by Order amend, in column 2 of Schedule 1, the competent authority specified for a contracting party.

3 Termination or suspension and resumption of agreement

- (1) Where notice is given of termination of an agreement referred to in Regulation 2(1), the Committee

shall, by Order, amend Schedule 1, with effect from the date the agreement ceases to have effect, so as to delete the contracting party with whom the agreement had been made, and its competent authority.

- (2) Where notice is given of suspension of all or part of an agreement described in paragraph (1), the Committee shall, by Order, suspend the operation of these Regulations to the extent that they implement so much of the agreement as is suspended.
- (3) Where all or part of an agreement described in paragraph (1) is resumed, the Committee shall, by Order, reinstate the operation of these Regulations to the extent that the Regulations implement so much of the agreement as is no longer suspended.
- (4) An Order made under this Regulation may contain such transitional, incidental and consequential provisions as the Committee considers necessary by reason of the termination, suspension or resumption of an agreement.

4 “Beneficial owner” defined

- (1) Subject to paragraph (2), “beneficial owner” shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his or her own benefit.
- (2) An individual is not deemed to be the beneficial owner when he or she –
 - (a) acts as a paying agent within the meaning of Regulation 6(1);
 - (b) acts on behalf of –
 - (i) a legal person,
 - (ii) an entity which is taxed on its profits under the general arrangements for business taxation,
 - (iii) an UCITS authorized in accordance with the UCITS Directive or an equivalent undertaking for collective investment established in Jersey, or
 - (iv) an entity referred to in Regulation 6(2),
and, in the case mentioned in clause (iv), discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment; or
 - (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.
- (3) Where –
 - (a) a paying agent has information suggesting that the individual who receives an interest payment, or for whom an interest payment is secured, may not be the beneficial owner; and
 - (b) neither paragraph (2)(a) nor (2)(b) applies,the paying agent shall take reasonable steps to establish the identity of the beneficial owner.
- (4) If, having taken the steps required by paragraph (3), the paying agent is unable to identify the beneficial owner, the paying agent shall treat the individual in question as the beneficial owner.

5 “Interest payment” defined

- (1) “Interest payment” shall mean –
 - (a) subject to paragraphs (2) and (10) to (13), interest paid or credited to an account relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures;
 - (b) interest accrued or capitalized at the sale, refund or redemption of the debt claims referred to in

sub-paragraph (a);

- (c) income deriving from interest payments either directly or through an entity referred to in Regulation 6(2), distributed by–
 - (i) an UCITS authorized in accordance with the UCITS Directive,
 - (ii) an equivalent undertaking for collective investment established in Jersey,
 - (iii) an entity which qualifies for the option under Regulation 6(7), or
 - (iv) an undertaking for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Jersey;
 - (d) income realized upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in sub-paragraph (a) –
 - (i) an UCITS authorized in accordance with the UCITS Directive,
 - (ii) an equivalent undertaking for collective investment established in Jersey,
 - (iii) an entity which qualifies for the option under Regulation 6(7),
 - (iv) an undertaking for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Jersey.
- (2) Penalty charges for late payment shall not be regarded as an interest payment.
 - (3) Paragraph (1)(c) and (d) shall not include income from undertakings or entities established in Jersey where the investment in debt claims referred to in paragraph (1)(a) of such undertakings or entities has not exceeded 15% of their assets.
 - (4) As regards paragraph (1)(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
 - (5) As regards paragraph (1)(d)–
 - (a) when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%; and
 - (b) where the paying agent cannot determine the amount of income realized by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
 - (6) When interest, as defined in paragraph (1), is paid to or credited to an account held by an entity referred to in Regulation 6(2), such entity not having qualified for the option under Regulation 6(7), such interest shall be considered an interest payment by such entity.
 - (7) Paragraph (6) shall not apply to interest paid or credited to an account of an entity referred to in Regulation 6(2) which has not qualified for the option in Regulation 6(7) and which is established in Jersey, where the investment of the entity in debt claims referred to in paragraph (1)(a) has not exceeded 15% of its assets.
 - (8) The percentage referred to in paragraph (1)(d) and paragraph (5)(a) shall, from 1st January 2011, be 25%.
 - (9) The percentages referred to in paragraphs (1)(d), (3) and (7) shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.
 - (10) Until 31st December 2010, domestic and international bonds and other negotiable debt securities which have first been issued before 1st March 2001 or for which the original issuing prospectuses

have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC, by the responsible authority in Jersey or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of paragraph (1)(a), provided that no further issues of such negotiable debt securities are made on or after 1st March 2002.

- (11) On and from 1st January 2011, domestic and international bonds and other negotiable debt securities described in paragraph (10) shall be considered as debt claims within the meaning of paragraph (1)(a) unless –
 - (a) they contain gross up and early redemption clauses; and
 - (b) the paying agent is established in Jersey and pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a contracting party.
- (12) Where a further issue is made on or after 1st March 2002 of a domestic or international bond or other negotiable debt security described in paragraph (10) issued by a government or a related entity acting as a public authority or whose role is recognized by an international treaty, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of paragraph (1)(a).
- (13) Where a further issue is made on or after 1st March 2002 of a domestic or international bond or other negotiable debt security described in paragraph (10) by any issuer not mentioned in paragraph (12), such further issue shall be considered a debt claim within the meaning of paragraph (1)(a).
- (14) The Committee may by Order amend the dates in paragraphs (10) and (11).
- (15) Schedule 2 shall have effect to define, for the purposes of paragraph (12), a related entity acting as public authority or whose role is recognized by an international treaty.

6 “Paying agent” and “Jersey paying agent” defined

- (1) Subject to paragraphs (2) to (7), “paying agent” shall mean any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
- (2) Subject to paragraph (3), any entity established in Jersey or in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment.
- (3) Paragraph (2) shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that –
 - (a) it is a legal person, with the exception of those legal persons referred to in paragraph (10); or
 - (b) its profits are taxed under the general arrangements for business taxation; or
 - (c) it is an UCITS recognized in accordance with the UCITS Directive or an equivalent undertaking for collective investment established in Jersey.
- (4) Where an economic operator established in Jersey is satisfied that it is paying interest to, or securing interest for, such an entity established in a contracting party which is considered a paying agent under paragraph (2), the economic operator shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the Comptroller of Income Tax.
- (5) The Comptroller of Income Tax shall pass on information communicated to the Comptroller pursuant to paragraph (4) to the competent authority of the contracting party where the entity is established.
- (6) An economic operator paying interest to, or securing interest for, an entity referred to in paragraph (2) in a contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with paragraphs (4) and (5).

- (7) An entity referred to in paragraph (2) who is established in Jersey shall have the option of being treated for the purposes of these Regulations as an UCITS equivalent undertaking for collective investment established in Jersey.
- (8) The exercise of the option in paragraph (7) shall require a certificate to be issued by the Comptroller of Income Tax and presented to the economic operator by that entity.
- (9) “Jersey paying agent” shall mean –
 - (a) an economic operator described in paragraph (1) who is established in Jersey;
 - (b) subject to paragraphs (6) and (7), an entity referred to in paragraph (2), where the interest mentioned therein is paid or secured by an economic operator described in sub-paragraph (a) of this paragraph.
- (10) The legal persons exempted from paragraph (3)(a) are–
 - (a) in Finland, avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/oppet bolag and kommanditbolag;
 - (b) in Sweden, handelsbolag (HB) and kommanditbolag (KB).
- (11) For the purposes of paragraphs (3)(c) and (7) an entity is established in Jersey if it is incorporated, administered or has its principal place of business, in Jersey.

7 Duty of Jersey paying agent to identify beneficial owner

- (1) A Jersey paying agent shall identify the beneficial owner in accordance with this Regulation.
- (2) In the case of contractual relations entered into before 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his or her name and address, by using the information at the paying agent’s disposal, in particular, pursuant to the Money Laundering (Jersey) Order 1999.
- (3) In the case of contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his or her name and address and the tax identification number (if any) allocated by the Comptroller of Income Tax, if the beneficial owner resides in Jersey or, otherwise, by the contracting party in which he or she resides, on the basis of the passport or of the official identity card presented by the beneficial owner.
- (4) Where the beneficial owner’s address does not appear on the passport or official identity card presented under paragraph (3), the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner.
- (5) Where a tax identification number is not mentioned on the passport or official identity card or any other documentary proof of identity presented under paragraph (3) or (4), the identity of the beneficial owner shall be supplemented by a reference to his or her date and place of birth, established on the basis of his or her passport or official identity card.

8 Duty of Jersey paying agent to establish residence of beneficial owner

- (1) A Jersey paying agent shall establish the residence of the beneficial owner in accordance with this Regulation.
- (2) The residence of the beneficial owner shall be considered to be situated in the country where the beneficial owner has his or her permanent address.
- (3) In the case of contractual relations entered into before 1st January 2004, the Jersey paying agent shall establish the residence of the beneficial owner by using the information at the paying agent’s disposal, in particular, pursuant to the Money Laundering (Jersey) Order 1999.
- (4) In the case of contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st January 2004, the Jersey paying agent shall establish the

residence of the beneficial owner on the basis of the address mentioned on the passport or official identity card or any other documentary proof of identity presented by the beneficial owner pursuant to Regulation 7(3) or (4).

- (5) Where a beneficial owner who presents a passport or official identity card issued by a contracting party claims to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the beneficial owner claims to be resident.
- (6) Where a beneficial owner described in paragraph (5) fails to present to the Jersey paying agent the tax residence certificate there mentioned, the contracting party which issued the passport or official identity card shall be considered to be the beneficial owner's country of residence.

9 Duty of Jersey paying agent to deduct and remit retention tax

- (1) A Jersey paying agent who makes an interest payment to a beneficial owner resident in a contracting party shall deduct tax at the applicable rate (the "retention tax") in accordance with Regulation 10.
- (2) The applicable rate is –
 - (a) for the period of 3 years beginning on the day these Regulations come into force, 15%;
 - (b) for the ensuing period of 3 years, 20%; and
 - (c) thereafter, 35%.
- (3) A Jersey paying agent shall, not later than the end of March following the end of each year, remit to the Comptroller of Income Tax all taxes deducted by the paying agent in that year pursuant to paragraph (1).
- (4) When remitting to the Comptroller of Income Tax, pursuant to paragraph (3), any tax deducted pursuant to paragraph (1), the Jersey paying agent shall notify the Comptroller of Income Tax of the name of the contracting party to whose competent authority 75% of the tax is to be transferred under Regulation 13(1).
- (5) Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990^[2] shall apply to a sum payable under paragraph (3) as if it were a sum payable to the Comptroller of Income Tax under Article 45 of the Income Tax (Jersey) Law 1961.^[3]
- (6) The Finance and Economics Committee may, by Order, specify the currency in which amounts are to be remitted to the Comptroller of Income Tax pursuant to paragraph (3).

10 Determination of amount of interest payment

- (1) For the purposes of Regulation 9, a Jersey paying agent shall levy retention tax–
 - (a) in the case of an interest payment within the meaning of Regulation 5(1)(a), on the gross amount of interest paid or credited;
 - (b) in the case of an interest payment within the meaning of Regulation 5(1)(b) or (d), on the amount of interest or income referred to in those sub-paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
 - (c) in the case of an interest payment within the meaning of Regulation 5(1)(c), on the amount of interest referred to in that sub-paragraph;
 - (d) in the case of an interest payment within the meaning of Regulation 5(6), on the amount of interest attributable to each of the members of the entity referred to in Regulation 6(2) who meet the conditions of Regulation 4(1).
- (2) For the purposes of paragraph (1)(a) and (b), the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt claim.

- (3) Where the Jersey paying agent is unable to determine the period mentioned in paragraph (2) on the basis of the information made available to the paying agent, the paying agent shall treat the beneficial owner as having been in possession of the debt claim for the entire period of its existence, unless the beneficial owner provides evidence of the date of the acquisition.

11 Exception where beneficial owner authorizes reporting of interest payments

- (1) Regulation 9 shall not apply where the beneficial owner has authorized the Jersey paying agent to report to the Comptroller of Income Tax all interest payments made by that agent to the beneficial owner.
- (2) Where the beneficial owner has given the authority described in paragraph (1), the Jersey paying agent shall, not later than the end of March in the year following the year in which the authority is given, report to the Comptroller of Income Tax –
 - (a) the identity and residence of the beneficial owner, established in accordance with Regulations 7 and 8;
 - (b) the name and address of the Jersey paying agent;
 - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest payment; and
 - (d) the total amount of interest or income or, as the case may require, the total amount of the proceeds of sale, redemption or refund on which, apart from this Regulation, the retention tax would have been levied under Regulation 10(1).

12 Exception where beneficial owner presents certificate

- (1) Regulation 9 shall not apply where the beneficial owner has presented to the Jersey paying agent a certificate conforming to paragraph (2) drawn up, in the name of the beneficial owner, by the competent authority of the contracting party in which the beneficial owner is resident for tax purposes.
- (2) The certificate shall indicate –
 - (a) the name and address of the beneficial owner;
 - (b) the tax or other identification number of the beneficial owner or, failing that, the date and place of birth of the beneficial owner;
 - (c) the name and address of the Jersey paying agent;
 - (d) the account number of the beneficial owner or where there is none, the identification of the security.
- (3) The certificate shall be valid for 3 years or such lesser period as is specified in it.

13 Duties of Comptroller of Income Tax

- (1) Where retention tax is remitted to the Comptroller of Income Tax pursuant to Regulation 9(3)–
 - (a) he or she shall transfer 75% of that tax to the competent authority of the contracting party in which the beneficial owner is resident; and
 - (b) the remainder shall be credited to the general revenue of the States.
- (2) Where retention tax is remitted to the Comptroller of Income Tax in a currency other than pounds sterling, he or she shall make the transfer under paragraph (1)(a) in that same currency.
- (3) The Comptroller of Income Tax shall communicate information reported to him or her under Regulation 11(2) to the competent authority of the contracting party in which the beneficial owner is resident.

- (4) The Comptroller of Income Tax shall make transfers under paragraph (1) and communications under paragraph (3)–
 - (a) at least once a year; and
 - (b) not later than the end of June following the year in respect of which the retention tax is remitted, or in which the information is communicated, to the Comptroller.
- (5) The Comptroller of Income Tax shall not disclose any information to the competent authority of a contracting party pursuant to these Regulations unless satisfied that the competent authority will comply with the requirements in paragraph (7) in respect of the information.
- (6) The Comptroller of Income Tax shall comply with the requirements in paragraph (7) in respect of information received by him or her pursuant to an agreement referred to in Regulation 2(1).
- (7) The information –
 - (a) shall be kept confidential;
 - (b) shall not be used for any purpose other than for the purposes of direct taxation, without the prior written consent of the authority disclosing the information being, as the case may require, the Comptroller of Income Tax or the competent authority of a contracting party;
 - (c) shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal.
- (8) Information may be disclosed in public court proceedings or in judicial proceedings for the purposes described in paragraph (7)(c).
- (9) Where the Comptroller of Income Tax considers that information that he or she has received from the competent authority of a contracting party is likely to be useful to the competent authority of another contracting party, the Comptroller of Income Tax may, with the agreement of the first-mentioned competent authority, transmit the information to the second-mentioned competent authority.

14 Right of beneficial owner resident in Jersey to tax credit

- (1) This Regulation applies where a beneficial owner resident in Jersey for a year of assessment proves, to the satisfaction of the Comptroller of Income Tax, that interest payments received by the beneficial owner in a contracting party in that year of assessment have been subject to a withholding tax pursuant to an agreement, implemented by these Regulations, between Jersey and the contracting party.
- (2) In a case to which this Regulation applies, the Comptroller of Income Tax shall allow the tax withheld in the contracting party pursuant to the agreement as a credit against the income tax payable by the beneficial owner pursuant to the Income Tax (Jersey) Law 1961^[4] in respect of the interest payments.

15 Offences

- (1) A person who knowingly fails to comply with any requirement imposed by these Regulations shall be guilty of an offence and liable to a fine.
- (2) A person who, when required by, or for the purposes of, these Regulations, provides information or produces any document that the person does not believe to be true, shall be guilty of an offence and liable to 2 years' imprisonment and a fine of level 4 on the standard scale.

16 Offences: aiders, abettors, bodies corporate, etc.

- (1) A person who aids, abets, counsels or procures the commission of an offence under these Regulations

shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

- (2) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of –
 - (a) a person who is a partner of the partnership or director, manager, secretary or other similar officer of the body corporate;
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

17 Amendments consequential on move to ministerial government

- (1) In Regulation 1 the definition "Committee" shall be deleted.
- (2) In the following Regulations for the word "Committee" in each place where it appears there shall be substituted the words "Chief Minister" –
 - (a) Regulation 2(3);
 - (b) Regulation 3;
 - (c) Regulation 5(14);
 - (d) Regulation 18(5).
- (3) In Regulation 9(6) for the words "Finance and Economics Committee" there shall be substituted the words "Minister for Treasury and Resources".

18 Citation and commencement

- (1) These Regulations may be cited as the Taxation (Agreements with European Union Member States) (Jersey) Regulations 2005.
- (2) This Regulation and Regulation 9(6) shall come into force forthwith.
- (3) Regulation 17 shall come into force on the day Article 42(3) of the States of Jersey Law 2005^[5] comes into force.
- (4) The remainder of these Regulations shall, subject to paragraph (5), come into force on 1st July 2005.
- (5) If it appears to the Committee that the agreements referred to in Regulation 2(1) will not apply on 1st July 2005, the Committee shall, by Order, direct that these Regulations (apart from this Regulation and Regulations 9(6) and 17) shall not come into force on 1st July 2005 and shall, either by that Order or by further Order, appoint the day when these Regulations (apart from this Regulation and Regulations 9(6) and 17) shall come into force, being the day on which the agreements referred to in Regulation 2(1) apply.

SCHEDULE 1

(Regulation 2)

CONTRACTING PARTIES AND THEIR COMPETENT AUTHORITIES

<i>1</i>	<i>2</i>
Contracting Parties	Competent authorities
Austria	Der Bundesminister für Finanzen or an authorized representative.
Belgium	The Minister of Finance or his or her authorized representative.
Cyprus	The Minister of Finance or an authorized representative.
Czech Republic	The Minister of Finance.
Denmark	The Minister for Taxation or his or her authorized representative.
Estonia	The Ministry of Finance or its authorized representative.
Finland	The Ministry of Finance, its authorized representative or the authority which, by the Ministry of Finance, is designated as competent authority.
France	The Minister of Budget or his or her authorized representative.
Germany	The Federal Office of Finance.
Greece	Ministry of Economy and Finance.
Hungary	Tax and Financial Control Administration.
Ireland	The Revenue Commissioners.
Italy	Il Capo del Dipartimento per le Politiche Fiscali del Ministero dell'Economia e delle Finanze or an authorized representative.
Latvia	The State Revenue Service.
Lithuania	The Minister of Finance or his or her authorized representative.
Luxembourg	The Minister of Finance or an authorized representative.
Malta	The Minister responsible for Finance or his or her authorized representative.
Poland	The Minister of Finance or his or her authorized representative.
Portugal	The Minister of Finance or his or her authorized representative.
Slovakia	The Ministry of Finance or its authorized representative.
Slovenia	The Ministry of Finance of the Republic of Slovenia or its authorized representative.
Spain	The Ministry of Economics and Finance.

Sweden

The Minister for Finance.

The Netherlands

The Minister of Finance or his or her authorized representative.

United Kingdom

The Commissioners of Inland Revenue or an authorized representative.

SCHEDULE 2

(Regulation 5(15))

RELATED ENTITY ACTING AS A PUBLIC AUTHORITY OR WHOSE ROLE IS RECOGNIZED BY AN INTERNATIONAL TREATY

For the purposes of Regulation 5(15), the following entities will be considered to be a “related entity acting as a public authority or whose role is recognized by an international treaty”:

A entities within the European Union:

- Belgium
- Vlaams Gewest (Flemish Region)
 - Région wallonne (Walloon Region)
 - Région bruxelloise/Brussels Gewest (Brussels Region)
 - Communauté française (French Community)
 - Vlaamse Gemeenschap (Flemish Community)
 - Deutschsprachige Gemeinschaft (German-speaking Community)
- Spain
- Xunta de Galicia (Regional Executive of Galicia)
 - Junta de Andalucía (Regional Executive of Andalusia)
 - Junta de Extremadura (Regional Executive of Extremadura)
 - Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha)
 - Junta de Castilla-León (Regional Executive of Castilla-León)
 - Gobierno Foral de Navarra (Regional Government of Navarra)
 - Govern de les Illes Balears (Government of the Balearic Islands)
 - Generalitat de Catalunya (Autonomous Government of Catalonia)
 - Generalitat de Valencia (Autonomous Government of Valencia)
 - Diputación General de Aragón (Regional Council of Aragon)
 - Gobierno de las Islas Canarias (Government of the Canary Islands)
 - Gobierno de Murcia (Government of Murcia)
 - Gobierno de Madrid (Government of Madrid)
 - Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
 - Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
 - Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
 - Diputación Foral de Alava (Regional Council of Alava)
 - Ayuntamiento de Madrid (City Council of Madrid)
 - Ayuntamiento de Barcelona (City Council of Barcelona)
 - Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
 - Cabildo Insular de Tenerife (Island Council of Tenerife)
 - Instituto de Crédito Oficial (Public Credit Institution)

Instituto Catalán de Finanzas (Finance Institution of Catalonia)
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece	μ (National Telecommunications Organisation)
	μ (National Railways Organisation)
	μ (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
	L'Agence française de développement (AFD) (French Development Agency)
	Réseau Ferré de France (RFF) (French Rail Network)
	Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
	Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
	Charbonnages de France (CDF) (French Coal Board)
	Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions
	Provinces
	Municipalities
	Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira)
	Região Autónoma dos Açores (Autonomous Region of Azores)
	Municipalities

B International entities:

European Bank for Reconstruction and Development

European Investment Bank

Asian Development Bank

African Development Bank

World Bank/IBRD/IMF

International Finance Corporation

Inter-American Development Bank

Council of Europe Soc. Dev. Fund

Euratom

European Community

Corporación Andina de Fomento (CAF) (Andean Development Corporation)

Eurofima

European Coal & Steel Community

Nordic Investment Bank

Caribbean Development Bank

The provisions of Regulation 4(8) to (11) are without prejudice to any international obligations entered into on behalf of or by Jersey with respect to the abovementioned international entities.

C Entities in third countries:

Those entities that meet the following criteria:

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

[1] *Recueil des Lois, Volume 2004, page 1046.*

[2] *Recueil des Lois, Volume 1990-1991, page 77 and Volume 1996-1997, pages 339 and 607.*

[3] *Recueil des Lois, Volume 1961-1962, page 220.*

[4] *Recueil des Lois, Volume 1961-1962, pages 197 and 443, Volume 1963-1965, pages 97, 143, 178, 189, 423 and 454, Volume 1966-1967, page 523, Volume 1968-1969, pages 38 and 219, Volume 1970-1972, pages 209, 305 and 382, Volume 1973-1974, page 275, Volume 1975-1978, pages 47, 148 and 257, Volume 1979-1981, pages 16, 157, 297 and 383, Volume 1982-1983, page 46, Volume 1984-1985, page 76, Volume 1986-1987, pages 192 and 208, Volume 1988-1989, pages 222 and 380, Volume 1990-1991, pages 96, 432 and 1088, Volume 1992-1993, pages 36 and 121, Volume 1994-1995, pages 220 and 366, Volume 1996-1997, pages 264, 643 and 652, Volume 1998, pages 3 and 259, Volume 1999, pages 209, 390, 403 and 418, Volume 2000, page 290, Volume 2001, pages 123 and 145, Volume 2003, page 239 and Volume 2004, page 795.*

[5] *Recueil des Lois, Volume 2005, page 367.*