

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 BRAZIL

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

STATES GREFFE

PROPOSITION

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

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

CHIEF MINISTER

REPORT

Background

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

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

The Agreement with the Government of the Federative Republic of Brazil

8. The Agreement entered into with the Government of the Federative Republic of Brazil (“the Agreement”) is a continuation of the ongoing programme of entering into tax agreements to the international standard with G20, OECD and EU member jurisdictions. Brazil is a member of the G20 and Agreements now signed with G20 Members total 16.
9. The Agreement is attached as an Appendix to this Report. The Agreement is in line with the OECD Model TIEA and provides for the exchange of information on tax matters on request. It is consistent with agreements signed previously with other jurisdictions and which the States have ratified.
10. Great importance is attached to maintaining a good relationship with the G20 Members and this Agreement is seen as a significant further strengthening of that relationship. It will also strengthen and enhance the existing business relationship with Brazil and will help to facilitate greater market access.

Procedure for signing and ratifying the Agreement

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

Financial and manpower implications

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

30th January 2013

APPENDIX

AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of Jersey and the Government of the Federative Republic of Brazil (hereinafter referred to as "Parties")

Whereas the Government of Jersey and the Government of the Federative Republic of Brazil (the Parties) wish to enhance and facilitate the exchange of information relating to taxes;

Whereas it is acknowledged that the Government of 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 Government of the Federative Republic of Brazil;

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

Article 1
Object and Scope of the Agreement

The competent authorities of the Parties 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 data shall include information that is foreseeably relevant to the determination, assessment, enforcement, collection or recovery of such taxes, with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

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 obligated 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 Brazil:
 - the federal income tax;
- b) in Jersey:
 - the income tax;

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Parties so agree. The competent authorities of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4
Definitions

1. For the purposes of this Agreement the term:
- a) “Brazil” means the Federative Republic of Brazil;
 - b) “Jersey” means the Bailiwick of Jersey, including the territorial sea;
 - c) “competent authority” means
 - i. in the case of Brazil, the Minister of Finance, the Secretary of the Federal Revenue or their authorised representatives;
 - ii. in the case of Jersey, the Treasury and Resources Minister or his authorized representative;
 - d) “person” includes a natural person, a legal person or any body or group of persons;
 - e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - g) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - h) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
 - i) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the

fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- j) “tax” means any tax to which the Agreement applies;
- k) “requesting Party” means the Party requesting information;
- l) “requested Party” means the Party requested to provide information;
- m) “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- n) “information” means any fact, statement, document or record in any form whatever;
- o) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- p) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- q) “national” means
 - i. in the case of Brazil, any individual possessing the Brazilian nationality and any legal entity or any other collective entity deriving its status as such from the laws in force in Brazil;
 - ii. in the case of Jersey, any individual resident in Jersey and any legal entity or any other collective entity deriving its status as such from the laws in force in Jersey.

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 laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon written request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if 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 at its own discretion all relevant 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) information regarding the legal and beneficial ownership of companies, partnerships, and other persons, including ownership information on all such persons in an ownership chain;
- c) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
- d) in the case of foundations, information on founders, members of the foundation council and beneficiaries,

- e) in the case of entities other than those covered by the above, information equivalent to subparagraphs a, b and c as appropriate and
- f) 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 in the control 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 the 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.

Article 6 Tax Examinations Abroad

1. By reasonable written notice given in advance, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall 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, to the extent permitted under its laws, allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate moment of a tax examination in the 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 Possibility of Declining a Request

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

- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party.

2. This Agreement shall not impose upon a Party any obligation to provide information 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, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process. This paragraph shall not prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

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

4. The requested Party shall not be required to obtain and provide information which 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.

2. Information provided to the competent authority of the requesting Party shall not be used for any purpose other than the purposes stated in Article 1 without the prior express 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 shall 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 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 controversy arises 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 agreement 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.

Article 11

Entry into Force

This Agreement shall enter into force when each Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date 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. Either Party may terminate the Agreement by notification of termination through diplomatic channels to the other Party
2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party.
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. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

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

Done at ^{London} on 28th January 2013 in two originals, each in the Portuguese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
JERSEY

FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF
BRAZIL

Philip Baines *Ruben Aguiar*
