

STATES OF JERSEY



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

**Lodged au Greffe on 7th June 2011
by the Chief Minister**

STATES GREFFE

PROPOSITION

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

to ratify the Agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of the Republic of Indonesia as set out in the Appendix to the Report of the Chief Minister dated 4th May 2011.

CHIEF MINISTER

REPORT

Agreement to be entered into with the Republic of Indonesia for the exchange of information relating to tax matters

1. The States are asked to ratify the signed Agreement to be entered into with the Republic of Indonesia for the exchange of information relating to tax matters attached as an Appendix to this report.

Background

2. In February 2002, Jersey entered into a political commitment to support the OECD's tax initiative on transparency and information exchange through the negotiation of Tax Information Exchange Agreements to an agreed international standard with each of the OECD Member States.
3. Progress globally on achieving the OECD's objectives was slow initially because of the absence of a level playing field. However, the number of Agreements negotiated and signed increased significantly after the G20 London Summit in April, 2009. Subsequent G20 Summits have continued to encourage jurisdictions to make progress in agreeing, implementing and abiding by the necessary international Agreements.
4. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which some 100 jurisdictions are members, agreed a peer review process to assess compliance with the international standards. To oversee this process, a Peer Review Group was set up chaired by France, with 4 Vice-Chairs from India, Japan, Singapore and Jersey.
5. Jersey has maintained an active programme of negotiating Tax Information Exchange Agreements with OECD and G20 members. This has enhanced the Island's international personality, and generally has helped to engender a more favourable view of the Island amongst the international community.
6. The latest position in respect of the programme of TIEA negotiations is attached as an Appendix to this report. A total of 21 Tax Information Exchange Agreements (TIEAs) and 2 Double Taxation Agreements (DTAs) have now been signed, of which 15 TIEAs and one DTA are in force.
7. As a Vice-Chair of the Global Forum Peer Review Group, Jersey has been determined to lead by example, and has attached particular importance to entering into Agreements on tax information exchange with G20 members. Jersey has now signed, initialled or completed negotiations with 17 of the 19 G20 countries (the other member of the G20 is the European Union).
8. Jersey has been actively involved with the process to assess compliance with the international standards. The peer review process is made up of 2 phases. Phase 1 is concerned with an assessment of the Laws and Regulations in place, and involves an assessment of whether these are sufficient to meet the international standards. All of the Global Forum members will be assessed in this respect over a 3 year period which commenced in March 2010. Phase 2 is concerned with assessing the effectiveness with which standards are being

applied. Most countries will be assessed to Phase 2 as a second stage after the end of Phase 1. However, a number of countries, of which Jersey is one, volunteered to be assessed for both Phase 1 and Phase 2 within the first 3 year period. Jersey was assessed in 2010 by a team of assessors drawn from Denmark and Bermuda supported by the Global Forum Secretariat. The Jersey report is due to be published following its adoption at the Global Forum meeting at the end of May 2011.

The Agreement with the Republic of Indonesia

9. The Tax Information Exchange Agreement entered into with the Republic of Indonesia is a continuation of the ongoing programme of signing TIEAs or DTAs with all OECD and G20 member countries. Indonesia is a member of the G20.

10. Attached as an Appendix to this report is –

(a) The Tax Information Exchange Agreement, which is consistent with Agreements signed previously with other countries.

The Agreement provides for the exchange of information on tax matters on request. However, that request has to be formulated in writing in the greatest detail possible. There can be no “fishing expeditions”. The Agreement will come into force once the parties to the Agreement have ratified it, and any necessary legislative steps have been taken.

(b) A Protocol between the Competent Authorities of the Government of Jersey and the Government of Indonesia concerning the interpretation or application of the Agreement for the exchange of information relating to tax matters.

11. The policy of negotiating TIEAs or DTAs with OECD and G20 member countries is supported by the finance industry. The Agreement with Indonesia is seen by industry as an important step in the development of an economic relationship with Indonesia which is seen as a future source of business opportunities.

Procedure for signing and ratifying the TIEA

12. The Agreement with the Republic of Indonesia was signed by the Chief Minister on 27th April 2011 in accordance with the provisions of Article 18(2) of the States of Jersey Law 2005 and paragraph 1.8.5 of the Strategic Plan 2006 – 2011 adopted by the States on 28th June 2006. The Agreement is now being presented to the States for ratification, following which it will be published, entered into the official record; and Regulations will be made for the Agreement to enter into force when the domestic procedures of both parties have been completed.

13. The States, on 29th January 2008, adopted the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. The Schedule to these Regulations lists the third countries, and includes the taxes covered by the Agreements being entered into. As further Agreements are entered into, the Regulations are amended to include in the schedule the jurisdiction and the taxes concerned. The necessary Regulations to provide for the inclusion in the schedule of the Republic of Indonesia and the relevant taxes will be presented to the States for adoption in due course subsequent to the ratification of the Agreement.

Financial and manpower implications

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

4th May 2011

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

Whereas the Government of the Jersey and the Government of the Republic of Indonesia (the Parties) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to all tax matters;

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

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 information shall include information that is foreseeably relevant to the determination, assessment, enforcement, collection or recovery of such taxes, with respect to persons subject to such taxes, or to the investigation

of tax matters or the prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession 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 Indonesia:

- (i) the income tax;
- (ii) the value added tax.

b) in Jersey:

- (i) the income tax;
- (ii) the goods and services 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) "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf, exclusive economic zone and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the United Nations Convention on the Law of the Sea 1982;
- b) "Jersey" means the Bailiwick of Jersey, including the territorial sea;
- c) "competent authority" means:
 - (i) in the case of the Republic of Indonesia, the Minister of Finance or his/her authorized representative;
 - (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

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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.

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

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

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

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

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

5. Any request for information shall be formulated with as much as detail as 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 notice given in advance, the requesting Parties 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 allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part 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 of the requested Party.
2. This Agreement shall not impose upon a Party any obligation to provide items subject to legal privilege as provided for under the domestic law of the relevant Party, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5 paragraph (4) shall not by reason of that fact alone be treated as such a secret or trade process.
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 may 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 may not be disclosed to any other jurisdiction.

Article 9
Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including reasonable costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult as necessary 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 in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

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

3. The competent authorities of the Parties may communicate with each other directly for the purposes of reaching agreement under this Article.

4. The Parties may also agree on other forms of dispute resolution should this become necessary.

Article 11
Entry into Force

1. Each Party shall notify to the other in writing the completion of the procedure required by its law for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon 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 serving a written notice of termination through the relevant channels of the other Party required by its respective law.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party.

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

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

DONE at Guernsey the 27th day of April 2011 in 2 (two) identical originals each in the English and Indonesian languages, all texts being equally authoritative. In case of divergence between the English and Indonesian text, the English text shall prevail.

FOR THE GOVERNMENT
OF JERSEY



TERRY LE SUEUR
Chief Minister
Senator

FOR THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA



YURI OCTAVIAN THAMRIN
Ambassador of the Republic of Indonesia
for the United Kingdom of Great Britain
and Northern Ireland

PROTOCOL
BETWEEN THE COMPETENT AUTHORITIES
OF THE GOVERNMENT OF JERSEY
AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
CONCERNING
THE INTERPRETATION OR APPLICATION OF THE AGREEMENT
BETWEEN THE GOVERNMENT OF JERSEY
AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTER

The Treasury and Resources Minister of Jersey and the Minister of Finance of the Republic of Indonesia ("the competent authorities"), desiring to facilitate the exchange of information with respect to taxes, have reached the following understandings:

This Protocol shall form an integral part of Agreement between the Government of Jersey and the Government of the Republic of Indonesia for the Exchange of Information Relating to Tax Matter.

1. With respect to paragraph 7 of Article 5 (*Exchange of Information Upon Request*) of the Agreement, it is understood that the competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

2. With respect to Article 9 (Costs) it is understood that:
 - a) The term "extraordinary costs" includes, but is not limited to:
 - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the requesting Party;
 - (ii) reasonable fees charged by a financial institution or other third party record keeper for copying records and research related to a specific request for information;
 - (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;
 - (iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in Indonesia or in Jersey for an interview, deposition or testimony relating to a particular information request;
 - (v) reasonable legal fees for non-government counsel appointed or retained, with the approval of the competent authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;
 - b) The term "ordinary costs" includes, but is not limited to, ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.
 - c) If the extraordinary costs pertaining to a specific request are expected to exceed £ 500 (five hundred sterling pounds), the competent authority of the requested Party will contact the competent authority of the requesting Party to determine whether the requesting Party wants to pursue the request.
 - d) The competent authorities will consult not later than 12 months after the date the Agreement enters into force, and upon request of either competent authority thereafter, with respect to costs incurred or potentially to be incurred under the Agreement and with a view to minimizing such costs.
3. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the agreement entered into will be in writing directly to

the competent authority of the other party at the addresses given below, or such other address as may be notified by one party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier mentioned competent authorities or their authorized representative.

In the case of the Government of Indonesia the address is:
Direktorat Jenderal Pajak
Jl. Jenderal Gatot Subroto No. 40 – 42
Jakarta, 12180

In the case of the Government of Jersey the address is:
Comptroller of Taxes
Cyril Le Marquand House
The Parade
St Helier
Jersey
JE4 8PF

4. This Protocol will come into effect on the entry into force of the TIEA.
5. The competent authorities may jointly decide, in writing, to amend this Protocol at any time. Amendments to the Protocol will come into effect on the date of the final letter confirming the amendment.
6. This Protocol will remain in effect until terminated at any time in writing, by either competent authority.

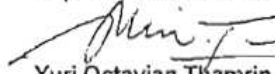
DONE at Guernsey in duplicate this 27th day of April 2011.

For the Government of Jersey



Terry Le Sueur
Chief Minister
Senator

For the Minister of Finance of the
Republic of Indonesia



Yuri Octavian Tjhamrin
Ambassador of the Republic of
Indonesia for the United Kingdom of
Great Britain and Northern Ireland