

**CONSOLIDATED TEXT**

**UK/GUERNSEY TAX INFORMATION EXCHANGE AGREEMENT**

The Exchange of Letters signed on 20 January 2009, as amended by the Exchange of Letters signed on 22 October 2013 to include

Article 5a Automatic Exchange of Information  
Article 5b Spontaneous Exchange of Information

The Agreement entered into force on 27 November 2009  
and is effective from that date

This Amended Agreement entered into force on 29 July 2014  
and is effective from that date

**HM Revenue & Customs**

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**AGREEMENT BETWEEN THE UNITED KINGDOM AND GUERNSEY  
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX  
MATTERS**

Whereas the United Kingdom and Guernsey (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

Whereas the States of Guernsey on 21 February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

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 Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax 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.

**Article 2**

**Jurisdiction**

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

**Article 3**

## **Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the Parties:

a) in the case of the United Kingdom,

- i) the income tax;
- ii) the corporation tax;
- iii) the capital gains tax;
- iv) the inheritance tax;
- v) the value added tax;

b) in the case of Guernsey,

- i) the income tax;
- ii) the dwellings profits tax.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes if the Parties, through their competent authorities, so agree. The competent authority of each Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

## **Article 4**

### **Definitions**

1. In this Agreement:

"United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;

"Guernsey" means the islands of Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;

"collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any scheme or fund in which the purchase sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

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

"competent authority" means,

- a) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative, and
- b) in the case of Guernsey, the Administrator of Income Tax or his delegate;

“criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

“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;

“information” means any fact, statement, document or record in whatever form;

“information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

“person” means a natural person, an individual, a company or any other body or group of persons;

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

“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;

“recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

“requested Party” means the Party to this Agreement which is requested to provide information or has provided information in response to a request;

“requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

“tax” means any tax covered by this Agreement.

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 it had 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 all appropriate information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and provide, through its competent authority and 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 ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and
  - (i) in the case of collective investment schemes, information on shares, units and other interests;
  - (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 persons that are not collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).

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

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information 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 a person identified in subparagraph (a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession 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 difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party, shall advise if there are any unexpected delays in obtaining the requested information and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

#### **Article 5a** **Automatic Exchange of Information**

1. The competent authorities of the Parties may automatically transmit information to each other for the purposes referred to in Article 1 (Object and Scope of the Agreement). The Parties shall determine the items of information to be exchanged pursuant to this Article and the procedures to be used to exchange such items of information.

2. The competent authorities of the Parties may mutually agree on additional procedures to be used for the purposes of this Article.

#### **Article 5b** **Spontaneous Exchange of Information**

The competent authority of a Party may spontaneously transmit to the competent authority of the other Party information that has come to the attention of the first-mentioned competent authority and that the first-mentioned competent authority supposes to be foreseeably relevant to the accomplishment of the purposes referred to in Article 1 (Object and Scope of the Agreement). The competent authorities of the Parties shall determine the procedures to be used to exchange such information.”

2. Each of the Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall have effect for information exchanged on or after that date without regard to the taxable period to which the information relates.

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

The competent authority of the requesting Party may request that the competent authority of 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 domestic 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 give reasonable notice to 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 the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the tax examination shall be made by the requested 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 public policy.
2. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, or information which would disclose 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.
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 if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
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 citizen of the requested Party as compared with a citizen 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. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any other purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.
4. 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, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

## **Article 10**

### **Mutual Agreement Procedure**

Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this 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 purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

## **Article 11**

### **Entry into Force**

Each of the Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications, and 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 giving a notice of termination in writing.
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. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. A Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.