

## **MEMORANDUM OF UNDERSTANDING**

### **BETWEEN THE GOVERNMENT OF GUERNSEY ("Government of Guernsey") AND HER MAJESTY'S REVENUE AND CUSTOMS ("HMRC") OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO COOPERATION IN TAX MATTERS**

#### **PREAMBLE**

- A. On the terms of this Memorandum of Understanding, HMRC will, from 6 April 2013 until 30 September 2016 make available a disclosure facility (including a bespoke scheme) to persons eligible to participate in it as set out in Schedule 2 to assist those persons in complying with their obligations to HMRC.
- B. To support the objectives of the disclosure facility, the Government of Guernsey will require financial intermediaries to contact relevant persons to advise them of the disclosure facility and to ensure adherence to legislation for the prevention of money-laundering.

#### **TERMS**

- 1. This Memorandum of Understanding must be interpreted in accordance with Schedule 1.
- 2. HMRC will make the terms of the disclosure facility in Schedule 2 available from 6 April 2013 until 30 September 2016.
- 3. The Government of Guernsey will-
  - (a) require financial intermediaries in Guernsey to contact their clients who are known to be relevant persons so that those clients are made aware of the disclosure facility before 31 December 2013 and to remind them about the disclosure facility during the six month period ending on 30 September 2016;
  - (b) continue to ensure that financial intermediaries in Guernsey properly apply Guernsey legislation for the prevention of money-laundering.
- 4. HMRC and the Government of Guernsey will provide (through a joint declaration, exchange of letters, issuance of "frequently asked questions" and answers, or otherwise) written guidance on Guernsey investment and wealth management structures and their treatment as a general matter by HMRC, with a view to providing clarification to relevant persons investing in Guernsey.

5. For the avoidance of doubt-

(a) this Memorandum of Understanding and anything done in connection with it shall be without prejudice to-

(i) any requirement for a person with any beneficial interest whatsoever in relevant property to account to HMRC for any UK tax payable in respect of such interest;

(ii) the application of HMRC's published criminal investigation policy;

(b) any tax withheld under the Agreement between the UK and Guernsey providing for measures equivalent to those laid down in the European Union Savings Directive (Council Directive 2003/48/EC) will be creditable and credited against any UK tax due under this disclosure facility;

(c) the obligations of an eligible person to report any interest in relevant property to HMRC and to account for any UK tax in relation to it will be satisfied only if full and unprompted disclosure is made in respect of the relevant property and full UK tax (together with interest and applicable penalties) is paid thereon.

6. HMRC may amend or withdraw the disclosure facility upon giving three months notice in writing to the Government of Guernsey.

7. Signatures

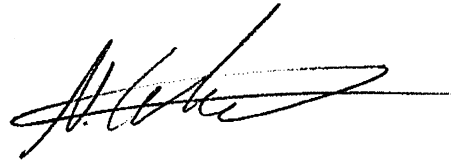
SIGNED BY:

For, and on behalf of,  
Her Majesty's  
Revenue and Customs of  
The United Kingdom of  
Great Britain and Northern  
Ireland



Edward Troup  
(HMRC Tax Assurance Commissioner)

For, and on behalf of,  
the Government  
of Guernsey



Nigel Garland  
Deputy Director (Compliance & International)  
of Income Tax

Date 11 March 2013

Date 11 March 2013

## **SCHEDULE 1**

### **Defined words and phrases**

1. The following words and phrases have the following meanings-

**"annuity contract"** means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals, but does not include a non investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account, product or arrangement identified as excluded from the definition of financial account;

**"cash value insurance contract"** means an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value (see paragraph 3);

**"cut off day"** means-

(a) in the case of a natural person, 6 April 1999;

(b) in the case of a legal person, 1 April 1999;

**"financial account"** means an account maintained by a financial institution;

**"financial institution"** means a Guernsey Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company;

**"financial intermediary"** means a person who holds or is required to hold a licence under the Financial Services Commission (Bailiwick of Guernsey) Law (1987);

**"HMRC"** means Her Majesty's Revenue and Customs and, where the context requires, its predecessor organisations (the Inland Revenue and Her Majesty's Customs and Excise) as well as any successor organisations;

**"insurance contract"** means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk;

**"investigation means"**-

(a) any criminal investigation conducted by HMRC relating to-

(i) those functions for which the Commissioners for HMRC are responsible as set out in the Commissioners for Revenue and Customs Act 2005 (c. 11), and

(ii) any money laundering offence within part 7 of the Proceeds of Crime Act 2002 (c. 29) which is associated with those functions;

(b) any civil enquiry of any kind that is supported by statutory information powers and is carried out for the purposes of ascertaining whether the UK tax liabilities of a person are correct and up-to-date.

**“person”** means a natural or legal person or any other body of persons;

**“published disclosure facility”** means any facility (apart from this one) or campaign offered by HMRC under which it is or was possible to regularise a person’s UK tax position;

**“relevant person”** means-

(a) in respect of a natural person, a person who, in the period commencing on 6 April 1999 and ending on 31 December 2013 -

(i) has had a beneficial interest in relevant property; and

(ii) has been resident in the UK for UK tax purposes,

for any part of the period.

(b) in respect of a legal person, a person that-

(i) in the period commencing on 1 April 1999 and ending on 31 December 2013 has had a beneficial interest in relevant property; and

(ii) is incorporated in the UK or has been resident in the UK for UK tax purposes in the period referred to in paragraph (i);

**“relevant property”** means-

(a) an account held with a bank or other financial institution in Guernsey;

(b) an annuity contract or cash value insurance contract issued or maintained by a financial institution in Guernsey; or

(c) a company (including a corporation and an institution structured as a corporation as well as a company without legal personality), partnership, foundation, establishment, trust, trust enterprise, or other fiduciary entity, estate, cash value insurance contract or annuity contract that is issued, formed, founded, settled, incorporated, administered, or managed in Guernsey;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“UK Company”** means a legal person that-

(a) has its place of incorporation in the UK, or

(b) has at any time on or after 1 April 1999 been resident in the UK for UK tax purposes;

**“UK tax”** means all taxes, duties and contributions under the care and management of or otherwise payable to HMRC;

**“UK tax year”** means the period commencing on 6 April in any year and ending on 5 April of the following year.

2. A relevant person has a beneficial interest in relevant property where-

(a) the person is a natural person who, on or at any time after 6 April 1999, has-

- (i) held or controlled a share or voting rights in, or
- (ii) received any of the profits of,

a legal person (other than those that are listed or which are collective investment vehicles) or a body of persons without legal personality.

(b) in the case of trusts or other fiduciary entities, the person is-

- (i) the person or one of the persons who established or funded it;
- (ii) the person or one of the persons regarded as its principal beneficiary or principal beneficiaries;
- (iii) a person entitled to any of its income or capital;
- (iv) a person who has received a distribution or distributions, in a given UK tax year from the entity since 6 April 1999; or
- (v) a person who has been provided with the benefit, in a given UK tax year, of an asset or any number of assets from such entity since 6 April 1999;

(c) in the case of an account with a bank or other financial institution that is relevant property-

- (i) the person in whose name the account is held if the person is a UK Company or a natural person who is the beneficial owner of the account;
- (ii) where the account is held in the name of a natural person who is not the beneficial owner or in the name of a legal person other than a UK company, the person identified as the "beneficial owner" in forms provided to the financial intermediary by that person pursuant to legislation for the prevention of money-laundering;

(d) in the case of a cash value insurance contract or an annuity contract-

- (i) the person entitled to access the cash value or change the beneficiary of the contract;
- (ii) if no person can access the cash value or change the beneficiary, the person named as the owner in the contract or has a vested entitlement to payment under the terms of the contract;
- (iii) the person entitled to receive a payment under a cash value annuity contract or annuity contract upon its maturity.

3. In determining whether an insurance contract has a cash value, no account must be taken of-

(a) an amount payable in respect of a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against; or

(b) a refund to the policyholder of a previously paid premium under an insurance contract (other than under a life insurance contract) due to policy cancellation, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or similar error.

4. Except where the context otherwise requires-

(a) the singular includes the plural and vice versa;

(b) in Schedule 2, a reference to a person is a reference to a person eligible to participate in the disclosure facility.

## **SCHEDULE 2**

### **The Disclosure Facility**

#### **Conditions for participation in the Disclosure Facility**

1. A person may participate in this disclosure facility if the person-
  - (a) is eligible to participate in the disclosure facility;
  - (b) applies to participate in the disclosure facility after 5 April 2013 and before 30 September 2016 in the manner required by HMRC;
  - (c) provides the level of disclosure required by HMRC for the purposes of the disclosure facility; and
  - (d) makes the financial commitment.

#### **Persons eligible to participate in the disclosure facility**

2. A person is eligible to participate in the disclosure facility if the person is a relevant person who is not the subject of an investigation by HMRC on 6 April 2013 that has not been concluded by that day.

#### **Level of disclosure required by HMRC**

3. A person provides the level of disclosure required by HMRC only if the person-
  - (a) makes full and unprompted disclosure in respect of all relevant property in which the person has had a beneficial interest after 5 April 1999;
  - (b) provides such information as HMRC reasonably deems necessary to ensure the person pays all UK tax (together with interest and penalties) required from that person taking account of the disclosure facility; and
  - (c) without prejudice to the generality of the foregoing, provides, at the time when application to participate in the disclosure facility is made-

- (i) the person's name, address (or registered office), date of birth (or date of incorporation );
- (ii) the person's national insurance number or any other unique tax reference appropriate to the person;
- (iii) in relation to a natural person, full details of all previously undisclosed UK tax liabilities in respect of every UK tax year commencing on or after 6 April 1999 and ending before the beginning of the UK tax year in which the disclosure is made;
- (iv) in relation to a legal person, full details of all previously undisclosed UK tax liabilities in respect of every accounting period commencing on or after 1 April 1999 and ending before the beginning of a period of 12 months starting on 1 April in which the application for the disclosure facility is made;
- (v) a computation of the overall UK tax liability of the person taking account of the disclosure facility;
- (vi) a declaration that the disclosure made is correct and complete;
- (vii) full contact details of any person who has provided professional advice in relation to making the application to participate in the disclosure facility.

#### **Financial commitment**

- 4. A person makes the financial commitment where-
  - (a) at the time when the application to participate in the disclosure facility is made, the person-
    - (i) pays the overall UK tax liability computed in compliance with paragraph 3(c)(v); or
    - (ii) provides evidence of inability to make such payment together with a proposal for payment and an appropriate payment on account; and
  - (b) pays any further UK tax, interest and penalties notified as payable taking account of the disclosure facility within 30 days of such notification or such other period as HMRC agrees.

#### **Persons who may participate in the facility conferred by paragraphs 6 to 8**

- 5. The facility conferred by paragraphs 6 to 8 is available only in relation to a person who-
  - (a) is eligible to participate in the disclosure facility;
  - (b) has not been the subject of an investigation by HMRC that concluded before 6 April 2013 or one that began after that day;

(c) has not engaged with, participated in or been contacted personally by HMRC in respect of any published disclosure facility before applying to HMRC to participate in the disclosure facility; and

(d) is not a "relevant person" for the purposes of the Agreement between the Swiss Confederation and the UK on cooperation in the area of taxation who could authorise disclosure of information to HMRC in relation to that person in accordance with that agreement.

### **Tax and Penalties**

6. In relation to a person to whom this paragraph applies (subject to paragraphs 8 and 9)-

(a) HMRC will not seek to recover from that person UK tax chargeable in respect of a UK tax year or an accounting period ending before the cut off day; and

(b) HMRC-

(i) will not impose a penalty on that person in respect of UK tax described in paragraph (a); and

(ii) will not impose a penalty on that person exceeding the percentage determined in accordance with paragraph 7 ("specified percentage") in respect of other UK tax disclosed by virtue of the disclosure facility as being chargeable.

### **Specified percentage**

7. The specified percentage is-

(a) in relation to anything falling for a penalty in accordance with Schedule 24 of the Finance Act 2007 (c. 11) ("Schedule 24"), Schedule 41 of the Finance Act 2008 (c. 9) ("Schedule 41") or Schedule 55 of the Finance Act 2009 (c. 10) ("Schedule 55") (other than anything falling for a penalty described in (b) and (c)), 20% of the UK tax to which the penalty relates;

(b) in relation to anything the amount of penalty for which is determinable by reference to paragraph 4A(2) of Schedule 24, paragraph 6A(2) of Schedule 41 or paragraph 6A(2) of Schedule 55, 30% of the UK tax to which the penalty relates;

(c) in relation to anything the amount of penalty for which is determinable by reference to paragraph 4A(3) of Schedule 24, paragraph 6A(3) of Schedule 41 or paragraph 6A(3) of Schedule 55, 40% of the UK tax to which the penalty relates;

(d) in any other case, 10% of the UK tax to which the penalty relates.

### **Errors on tax returns**

8. Where-

(a) an error has been made in a tax return made to HMRC by virtue of the Taxes Management Act 1970 (c. 9) in respect of-



(i) an accounting period ending more than four years before the beginning of a period of 12 months starting on 1 April in which the application for the disclosure facility is made, or

(ii) a UK tax year ending more than four years before the beginning of the UK tax year in which the application for the disclosure facility is made,

(b) the error led to a failure of a person to report to HMRC an interest in relevant property on which the person would have been subject to UK tax,

(c) the error was made by that person and no one else, and

(d) HMRC (after due consideration of any representations made by or on behalf of that person), considers the error was one that a reasonable person would have made,

any further UK tax that would have been disclosed as chargeable if the error had not occurred will be treated for the purposes of paragraph 6 as chargeable in respect of a UK tax year or an accounting period ending before the cut off day.

#### **Property excluded from the facility in paragraph 6**

9. The facility in paragraph 6 does not apply in respect of UK tax or penalties relating to-

(a) an account with a bank or other financial institution held outside the UK or Guernsey which was opened through a UK branch or agency of a bank;

(b) property constituting "criminal property" within the meaning in section 340 of the Proceeds of Crime Act 2002 (c. 29) by virtue of being a benefit from criminal conduct (other than conduct comprising only illegal tax evasion (not limited to UK tax)).

#### **The Bespoke Service**

10. The bespoke service will be a personalised service available to a person and will have the following features-

(a) the possibility of initial anonymous contact by a professional adviser (including a financial intermediary) to discuss with HMRC the circumstances of a person on a "no names" basis;

(b) the possibility for a person or professional adviser acting on behalf of that person having a single point of contact within a discrete HMRC team to ensure consistency of treatment;

(c) due consideration by HMRC of-

(i) residence and domicile claims made by a person, subject to the provision of full supporting evidence;

(ii) estimated offers to settle UK tax liability, subject to receipt of evidence justifying such estimate;

(iii) offers to pay by instalments over a reasonable period of time (together with such interest as required by law on unpaid amounts), subject to the provision of evidence confirming hardship or the need for the sale of any property in order to make payment of UK tax, interest or penalties;

(d) provided full and accurate disclosure is made by a person and where it is practical to do so, HMRC will fulfil its obligations in order to facilitate the determination of a person's liability to pay outstanding UK tax, interest and penalties within nine months of the making of the application to participate in the disclosure facility or such other period of time as HMRC agrees with the person;

(e) where a penalty imposed on a person in relation to a liability to UK tax disclosed in consequence of the person's participation in the bespoke service is determined taking into account the maximum reduction for disclosure from that penalty possible, HMRC will not, in relation to that penalty, publish information about that person in accordance with section 94 of the Finance Act 2009 (c. 10);

(f) in respect of an accounting period ending before 1 April 2016 or UK tax year ending before 6 April 2016, assistance by HMRC to a person regarding compliance with UK tax law requirements without prejudice to HMRC's powers in relation to that person.

11. For the purposes of making a disclosure of tax, following an inaccuracy made in relation to a person's UK tax affairs, a person may request that the bespoke service applies in respect of all and any assets and income in respect of which UK tax may apply in respect of the period commencing on 6 April 2013 and ending on 5 April 2016.