

EXCHANGE OF LETTERS
BETWEEN HER MAJESTY'S GOVERNMENT AND
THE STATES OF GUERNSEY
CONCERNING
AN AGREEMENT BETWEEN
THE UNITED KINGDOM AND GUERNSEY FOR THE
EXCHANGE OF INFORMATION RELATING TO TAX
MATTERS

AND

AN ARRANGEMENT AMENDING THE 1952 ARRANGEMENT
BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

Letter from UK Minister

Sir,

I have the honour to propose to you

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Guernsey for the exchange of information relating to tax matters (“the Agreement”) at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty’s Government and the States of Guernsey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income at Appendix 2 to this letter and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

In the event that either Party to the Agreement at Appendix 1 applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Party, it is understood that that other Party may suspend the operation of the Agreement for so long as such measures apply. For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Party to residents or citizens of either Party on the basis that the other Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

The United Kingdom and Guernsey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Guernsey has taken in recent years to comply with these international standards and is also pleased to note that Guernsey will shortly be reviewed by the IMF to assess compliance with the current international standards.

The United Kingdom will use its best endeavours to ensure that where EU Directives or Regulations include provisions referring to the position of third countries, Guernsey is treated as fairly as other third countries or territories.

The United Kingdom recognises that Guernsey is committed to international cooperation and information exchange on tax matters, and recognises the States of Guernsey's commitment to a "good neighbour" policy.

I have the honour to propose that, if the above is acceptable to the States of Guernsey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.

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

Lord Bach
Parliamentary Under Secretary of State for Justice

Reply from Chief Minister of Guernsey

Sir,

I have the honour to acknowledge receipt of your letter of 20th January 2009, which reads as follows:

“Sir,

I have the honour to propose to you

- the Agreement between the United Kingdom of Great Britain and Northern Ireland and Guernsey for the exchange of information relating to tax matters (“the Agreement”) at Appendix 1 to this letter;
- that the Agreement shall have effect in accordance with Article 11 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Agreement, and to notify each other without delay through the formal channels when such procedures are completed.

I also have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty’s Government and the States of Guernsey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income at Appendix 2 to this letter and that this Arrangement shall have effect in accordance with paragraph 7 thereof.

In the event that either Party to the Agreement at Appendix 1 applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Party, it is understood that that other Party may suspend the operation of the Agreement for so long as such measures apply. For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Party to residents or citizens of either Party on the basis that the other Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

The United Kingdom and Guernsey recognise that we share a common commitment to comply with international standards of anti-money laundering and counter terrorist financing legislation and financial regulation, and to participate in international efforts

to combat financial and other crimes including fiscal crime. The Government of the United Kingdom is pleased to note the actions that Guernsey has taken in recent years to comply with these international standards and is also pleased to note that Guernsey will shortly be reviewed by the IMF to assess compliance with the current international standards.

The United Kingdom will use its best endeavours to ensure that where EU Directives or Regulations include provisions referring to the position of third countries, Guernsey is treated as fairly as other third countries or territories.

The United Kingdom recognises that Guernsey is committed to international cooperation and information exchange on tax matters, and recognises the States of Guernsey's commitment to a "good neighbour" policy.

I have the honour to propose that, if the above is acceptable to the States of Guernsey, this letter and Appendices 1 and 2 together with your reply will constitute our mutual acceptance of the provisions of the Agreement and the Arrangement.

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

I am able to confirm that the States of Guernsey are in agreement with the contents of your letter dated 20th January 2009 and that this letter constitutes our mutual acceptance and making of the Agreement contained in Appendix 1 and the Arrangement contained in Appendix 2 to your letter and appended to this letter.

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

Lyndon Trott
Chief Minister

**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 6

Tax Examinations Abroad

1. 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

1. 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.

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE STATES OF GUERNSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1994 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS

Her Majesty's Government and the States of Guernsey;

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangements between the two governments for the avoidance of double taxation;

Have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994 Arrangement.

2. After paragraph 2(1)(k) of the 1952 Arrangement there shall be inserted the following:

"(l) the term "taxation authority" means:

(i) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

(ii) in Guernsey, the Administrator of Income Tax or his delegate."

3. Paragraph 4 of the 1952 Arrangement shall be deleted and replaced with the following:

"4. -(1) Where:

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory;
or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where one of the territories includes in the profits of an enterprise of that territory - and taxes accordingly - profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the taxation authorities of the territories shall if necessary consult each other.”

4. After paragraph 5 of the 1952 Arrangement there shall be inserted the following new paragraph:

“5A. Subject to the provisions of paragraph 6, pensions and other similar remuneration paid to an individual who is a resident of one of the territories shall be taxable only in that territory.”

5. After paragraph 9A of the 1952 Arrangement there shall be inserted the following new paragraph:

“9B. –(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the taxation authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the taxation authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The taxation authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

(4) The taxation authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph.”

6. Paragraph 10(2) of the 1952 Arrangement shall be deleted.

7. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax, for any year of assessment beginning on or after 6th April next following the date on which this Arrangement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Arrangement enters into force;

(b) in Guernsey, in respect of Guernsey tax, for any year of charge beginning on or after 1st January next following the date on which this Arrangement enters into force.

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