

2005 No. 1262

INCOME TAX

**The Tax Information Exchange Agreement (Taxes on
Income) (Guernsey) Order 2005**

Made - - - - - *7th May 2005*

At the Court at Buckingham Palace, the 7th day of May 2005

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 815C(3) of the Income and Corporation Taxes Act 1988(a) a draft of this Order was laid before, and approved by a resolution of, the House of Commons;

Accordingly Her Majesty, in exercise of the power conferred upon Her by section 815C of the Act of 1988, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation

1. This Order may be cited as the Tax Information Exchange Agreement (Taxes on Income) (Guernsey) Order 2005.

Declaration about exchange of information

2.—(1) It is declared that the arrangements specified in the Agreement set out in Part I of the Schedule to this Order, and the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the States of Guernsey with a view to the exchange of information foreseeably relevant to the administration or enforcement of—

- (a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax; and
- (b) the laws of Guernsey concerning taxes imposed by Guernsey which are of a similar character to any of those taxes.

(2) It is further declared that it is expedient that the arrangements referred to in paragraph (1) should have effect.

A. K. Galloway
Clerk of the Privy Council

(a) 1988 c. 1. Section 815C was inserted by section 146(1) of the Finance Act 2000 (c. 17) and amended by section 88(2) of the Finance Act 2002 (c. 23) and section 198 of the Finance Act 2003 (c. 14).

SCHEDULE

PART I

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN GUERNSEY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

WHEREAS:

1. Article 17 of Directive 2003/48/EEC (“the Directive”) of the Council of the European Union (“the Council”) on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from 1 January 2005 provided that—

- “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
- (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”.

2. The relationship of Guernsey with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol Guernsey is not within the EU fiscal territory.

3. Guernsey notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

4. The “withholding tax” referred to in the Directive will be referred to as the “retention tax” in Guernsey’s domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as “withholding/retention tax” and shall have the same meaning.

5. Guernsey has agreed to apply a retention tax with effect from 1 January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement have generally been met.

6. Guernsey has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive.

7. Guernsey has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

Guernsey and the United Kingdom of Great Britain and Northern Ireland hereinafter referred to as a “contracting party” or the “contracting parties” unless the context otherwise requires,

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

- (a) the automatic exchange of information by the competent authority of the United Kingdom of Great Britain and Northern Ireland to the competent authority of Guernsey in the same manner as to the competent authority of a Member State;
- (b) the application by Guernsey, during the transitional period defined in Article 10 of the Directive, of a retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (c) the automatic exchange of information by the competent authority of Guernsey to the competent authority of the United Kingdom of Great Britain and Northern Ireland in accordance with Article 13 of the Directive;
- (d) the transfer by the competent authority of Guernsey to the competent authority of the United Kingdom of Great Britain and Northern Ireland of 75% of the revenue of the retention tax;

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term “competent authority” when applied to the contracting parties means “The Commissioners of Inland Revenue or an authorised representative” in respect of the United Kingdom of Great Britain and Northern Ireland and “the Administrator of Income Tax” in respect of Guernsey.

ARTICLE 1

Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in Guernsey to beneficial owners within the meaning of Article 5 of this Agreement who are residents of the United Kingdom of Great Britain and Northern Ireland shall, subject to Article 3 of this Agreement, be subject to a retention from the amount of interest payment during the transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement. The rate of retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

ARTICLE 2

Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 8 of this Agreement, are made by a paying agent established in the United Kingdom of Great Britain and Northern Ireland to beneficial owners, as defined in Article 5 of this Agreement, who are residents of Guernsey, or where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

- (a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests;
- (d) information concerning the interest payment specified in Article 4(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund;

and the United Kingdom of Great Britain and Northern Ireland will comply with paragraph 2 of this Article.

(2) Within six months following the end of their tax year, the competent authority of the United Kingdom of Great Britain and Northern Ireland shall communicate to the competent authority of Guernsey, automatically, the information referred to in paragraph (1) (a)–(d) of this Article, for all interest payments made during that year.

ARTICLE 3

Exceptions to the Retention Tax Procedure

(1) Guernsey when levying a retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

- (a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
- (b) a procedure which ensures that retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

- (i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
- (ii) the name and address of the paying agent;
- (iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of Guernsey in which the paying agent is established shall communicate the information referred to in Article 2(1) of this Agreement to the competent authority of the United Kingdom of Great Britain and Northern Ireland as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

ARTICLE 4

Basis of assessment for retention tax

(1) A paying agent established in Guernsey shall levy retention tax in accordance with Article 1 of this Agreement as follows:

- (a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
- (d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;
- (e) where Guernsey exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of retention tax by Guernsey shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, Guernsey may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

ARTICLE 5

Definition of beneficial owner

(1) For the purposes of this Agreement, “beneficial owner” shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

- (a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;
- (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in Guernsey, or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment;
- (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph (1)(a) nor (1)(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

ARTICLE 6

Identity and residence of beneficial owners

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3).

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10 June, 1991 in the case of the United Kingdom of Great Britain and Northern Ireland or equivalent legislation in the case of Guernsey on prevention of the use of the financial system for the purpose of money laundering;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January, 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

- (a) for contractual relations entered into before 1 January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of the United Kingdom of Great Britain and Northern Ireland or equivalent legislation in the case of Guernsey;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

ARTICLE 7

Definition of paying agent

(1) For the purposes of this Agreement, "paying agent" means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

- (a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or
- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in Guernsey.

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in its territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are:

- (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
- (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

ARTICLE 8

Definition of interest payment

(1) For the purposes of this Agreement “interest payment” shall mean:

- (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 7(2) of this Agreement, distributed by:
 - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
 - (ii) an equivalent undertaking for collective investment established in Guernsey;
 - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Guernsey.
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC;
 - (ii) an equivalent undertaking for collective investment established in Guernsey;
 - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Guernsey.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1)(a) and (b) of this Article.

(2) As regards paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1)(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1 January, 2011 be 25%.

(8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

ARTICLE 9

Retention Tax Revenue sharing

(1) Guernsey shall retain 25% of the retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) Guernsey levying retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the United Kingdom of Great Britain and Northern Ireland proportionate to the transfers carried out pursuant to paragraph (1) of this Article.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of Guernsey.

(4) Guernsey levying retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

ARTICLE 10

Elimination of double taxation

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by Guernsey of the retention tax to which this Agreement refers in accordance with the following provisions—

- (i) if interest received by a beneficial owner has been subject to retention tax in Guernsey, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;
- (ii) if, in addition to the retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

ARTICLE 11

Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 14 of this Agreement, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are

made on or after 1 March 2002. However, should the transitional period continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses; and,
- where the paying agent is established in a contracting party applying retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

ARTICLE 12

Mutual agreement procedure

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

ARTICLE 13

Confidentiality

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

ARTICLE 14

Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive, Guernsey shall cease to apply the retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period Guernsey elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

ARTICLE 15

Entry into force

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1 January 2005.

ARTICLE 16

Termination

- (1) This Agreement shall remain in force until terminated by either contracting party.
- (2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

ARTICLE 17

Application and suspension of application

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.
- (3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

Done in the English language.

Annex:

List of related entities referred to in Article 11

For the purposes of Article 11 of this Agreement, the following entities will be considered to be a “*related entity acting as a public authority or whose role is recognised by an international treaty*”:

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

Vlaams Gewest (Flemish Region)
Région wallonne (Walloon Region)
Région bruxelloise/Brussels Gewest (Brussels Region)
Communauté française (French Community)
Vlaamse Gemeenschap (Flemish Community)
Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

Xunta de Galicia (Regional Executive of Galicia)
Junta de Andalucía (Regional Executive of Andalusia)
Junta de Extremadura (Regional Executive of Extremadura)
Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
Junta de Castilla- León (Regional Executive of Castilla- León)
Gobierno Foral de Navarra (Regional Government of Navarra)
Govern de les Illes Balears (Government of the Balearic Islands)
Generalitat de Catalunya (Autonomous Government of Catalonia)
Generalitat de Valencia (Autonomous Government of Valencia)

Diputación General de Aragón (Regional Council of Aragon)
Gobierno de las Islas Canarias (Government of the Canary Islands)
Gobierno de Murcia (Government of Murcia)
Gobierno de Madrid (Government of Madrid)
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
Diputación Foral de Alava (Regional Council of Alava)
Ayuntamiento de Madrid (City Council of Madrid)
Ayuntamiento de Barcelona (City Council of Barcelona)
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
Cabildo Insular de Tenerife (Island Council of Tenerife)
Instituto de Crédito Oficial (Public Credit Institution)
Instituto Catalán de Finanzas (Finance Institution of Catalonia)
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
L'Agence française de développement (AFD) (French Development Agency)
Réseau Ferré de France (RFF) (French Rail Network)
Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
Charbonnages de France (CDF) (French Coal Board)
Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

Italy

Regions
Provinces
Municipalities
Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

Pašvaldības (Local governments)

Poland

gminy (communes)
powiaty (districts)
województwa (provinces)
związki gmin (associations of communes)
związki powiatów (association of districts)
związki województw (association of provinces)
miasto stołeczne Warszawa (capital city of Warsaw)
Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

Região Autónoma da Madeira (Autonomous Region of Madeira)
Região Autónoma dos Açores (Autonomous Region of Azores)
Municipalities

Slovakia

mestá a obce (municipalities)
Železnice Slovenskej republiky (Slovak Railway Company)
Štátny fond cestného hospodárstva (State Road Management Fund)
Slovenské elektrárne (Slovak Power Plants)
Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank / IBRD / IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Social Development Fund
EURATOM
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD COUNTRIES:

The entities that meet the following criteria:

- (1) The entity is clearly considered to be a public entity according to the national criteria.
- (2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- (3) Such public entity is a large and regular issuer of debt.
- (4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

CONDITIONS FOR AMENDING THE PRESENT ANNEX:

The list of related entities in this Annex may be amended by mutual agreement.

PART II

Exchange of Notes

Note from Her Majesty's Government

Dear Deputy Morgan,

I have the honour to refer to the texts of respectively the "Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply automatic exchange of information" and the "Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply the withholding tax in the transitional period", that resulted from the negotiations with the Island Authorities on a Savings Tax Agreement, and that were annexed, respectively as Annex I and Annex II, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (Doc. 7408/04 FISC 58).

In view of the above mentioned agreed texts, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Guernsey, I have the honour

— to propose to you the agreements as contained in the "Agreement on the taxation of savings income" at Appendix 1 to this letter;

— to propose that the said agreements may come into effect on 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later subject to the notification to each other that internal constitutional formalities for the coming into effect of these agreements are completed;

— to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to the Government of Guernsey, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the agreements between the United Kingdom of Great Britain and Northern Ireland and Guernsey.

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

Falconer of Thoroton, C

Note from the States of Guernsey

Dear Lord Falconer,

I have the honour to acknowledge receipt of your letter of 18 May 2004, which reads as follows:

“Dear Deputy Morgan,

I have the honour to refer to the texts of respectively the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply automatic exchange of information” and the “Proposed Model Agreement between each of Guernsey, Isle of Man, and Jersey and each individual EU Member State that is to apply the withholding tax in the transitional period”, that resulted from the negotiations with the Island Authorities on a Savings Tax Agreement, and that were annexed, respectively as Annex I and Annex II, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (Doc. 7408/04 FISC 58).

In view of the above mentioned agreed texts, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Guernsey, I have the honour

— to propose to you the agreements as contained in the “Agreement on the taxation of savings income” at Appendix 1 to this letter;

— to propose that the said agreements may come into effect on 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later subject to the notification to each other that internal constitutional formalities for the coming into effect of these agreements are completed;

— to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to the Government of Guernsey, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the agreements between the United Kingdom of Great Britain and Northern Ireland and Guernsey.

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

I am able to confirm that Guernsey has agreed to make Bilateral Agreements with each EU Member State and that this letter constitutes our mutual acceptance and making of the ‘Agreement on the Taxation of Savings Income between Guernsey and the United Kingdom of Great Britain and Northern Ireland’ as set out in Appendix 1 of your letter dated 18 May 2004 and appended to this letter.

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

L. C. Morgan
Chief Minister

EXPLANATORY NOTE

(This note is not part of the Order)

The Tax Information Exchange Agreement between the United Kingdom and Guernsey is set out in the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Agreement contained in Part I of the Schedule to the Order, and that it is expedient that those arrangements should have effect.

The Tax Information Exchange Agreement secures the application in Guernsey of the same measures as are contained in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (“the Directive”). It is based on a model reflecting the provisions of the Directive, which was drawn up by Guernsey, jointly with Jersey and the Isle of Man for all Member States, discussed by those Member States and approved by the EU Council of Ministers.

The Agreement constitutes a reciprocal arrangement between the United Kingdom and Guernsey for the exchange of information on savings income in the form of interest payments made cross-border from one Party to individuals resident in the other Contracting Party.

As the Agreement enshrines all the measures corresponding to the Directive, it provides not only for the exchange arrangements between competent authorities but also the details of the mechanisms to be followed by paying agents for the identification of individual owners, and for collecting the information to be exchanged.

For an initial transitional period corresponding to the transitional period in the Directive, Guernsey will levy a retention (withholding) tax on relevant payments, unless the individual owner opts for the interest to be reported. (This arrangement corresponds to the transitional provisions granted under the Directive to Austria, Belgium and Luxembourg.) Income generated by the retention tax will be shared with the United Kingdom, and relieved in the same manner as withholding tax is to be relieved under the Directive.

The United Kingdom will apply automatic exchange of information from the start of the Agreement. At the end of the transitional period, however, both parties will apply full automatic exchange of information in respect of the information covered by the Agreement.

The detailed provisions of the Agreement are as follows—

Articles 1–4 set out the details of the transitional retention tax and the categories of information to be exchanged automatically, both during the transitional period and thereafter.

Articles 5–8 and Article 11 provide the definitions corresponding to those in the Directive of beneficial owner, paying agent and interest.

Article 9 confirms that Guernsey will share 75% of the revenue obtained by the retention tax with the United Kingdom. As for the withholding taxes levied by Member States under the Directive, under Article 10 the United Kingdom will make provision to ensure income subject to retention is not subject to double taxation.

Article 12 provides for a consultation procedure, in the event of any disagreement between the parties as to the interpretation of the Agreement and Article 13 sets out the confidentiality provisions concerning the information.

Article 14 confirms that Guernsey will move to full, automatic exchange of information at the end of the transitional period, with the option to do so earlier if wished.

Articles 15–17 deal with commencement and the conditions for application of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures or the date of application of the Directive, 1 July 2005, whichever is later. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.

2005 No. 1262

INCOME TAX

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