

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENT
WITH THE UNITED KINGDOM

The States are asked to decide:-

Whether, after consideration of the policy letter dated 27 June 2016 they are of the opinion:-

1. To declare that Guernsey's Double Taxation Arrangement with the United Kingdom, as now amended, should have effect in relation to income tax in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended.

The above Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENT WITH THE UNITED KINGDOM

Presiding Officer
Royal Court
St Peter Port
Guernsey

27 June 2016

Dear Sir

1. Executive Summary

This report proposes that the States declare, by Resolution, that an amendment made to the Double Taxation Arrangement ("DTA") entered into with the United Kingdom, by Exchange of Letters, should have effect, with the consequence that the amended DTA shall also have effect in relation to income tax, notwithstanding anything contained in the Income Tax (Guernsey) Law, 1975, as amended ("the Income Tax Law").

2. Report

- 2.1. The principal purpose of a DTA is for two governments to agree procedures for the prevention of double taxation and tax evasion, with respect to their domestic taxes.
- 2.2. The DTA with the United Kingdom came into force in 1952. The United Kingdom has proposed a comprehensive renegotiation of the DTA, commencing in 2016. In the interim, however, also at the request of the United Kingdom, the DTA has been revised to prevent potential avoidance of tax in the United Kingdom where income from immovable property in the United Kingdom arises to a resident of Guernsey, and vice versa. Similar amendments have been made in respect of gains arising from the transfer of such immovable property, or the transfer of shares (except where the shares are substantially and regularly traded on a Stock Exchange), or comparable interests which derive more than 50% of their value, directly or indirectly, from such immovable property.

2.3. The amendment to the DTA has been reached by an Exchange of Letters, by the United Kingdom on 29 February 2016 and by Guernsey on 9 March 2016. A copy of the Exchange of Letters is appended to this report.

2.4. Section 172(1) of the Income Tax Law provides:

“If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment.”

3. Recommendations

The amendment to the DTA made with the United Kingdom, by Exchange of Letters, is appended to this report. That DTA was made with a view to affording relief from double taxation. The Committee therefore recommends that the States should declare that the DTA, as now amended, should have effect in relation to income tax in accordance with section 172(1) of the Income Tax Law.

Yours faithfully

G A St Pier
President

L Trott
Vice-President

A Brouard
J Le Tocq
J Stephens



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

**Chief Minister Jonathon Le Tocq
Chief Minister's Department
Sir Charles Frossard House, PO Box 43
La Charrotterie,
ST PETER PORT Guernsey
GY1 1FH**

29 February 2016

Dear Chief Minister

I 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 1 to this letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof.

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

Yours sincerely

David Gauke MP



APPENDIX 1

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, 2009 AND 2015 ARRANGEMENTS 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 arrangement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion, have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994, 2009 and 2015 Arrangements.
2. To insert after subparagraph (4) of paragraph 3 of the 1952 Arrangement the following new subparagraph:

"(5) Where profits include items of income or capital gains which are dealt with separately in other paragraphs of this Arrangement, then the provisions of those paragraphs shall not be affected by the provisions of this paragraph."
3. To insert after paragraph 3 of the 1952 Arrangement the following new paragraphs:

"3A. (1) Income derived by a resident of one of the territories from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of subparagraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of subparagraphs (1) and (3) shall also apply to the income from immovable property of a United Kingdom enterprise and a Guernsey enterprise."

"3B. (1) Gains derived by a resident of one of the territories from the alienation of immovable property referred to in paragraph 3A and situated in the other territory may be taxed in that other territory.

(2) Gains derived by a resident of one of the territories from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or



comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory.”

4. 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 from 16 March 2016.



TREASURY AND RESOURCES

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

David Gauke MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
LONDON
SW1A 2HQ

Treasury and Resources
Sir Charles Frossard House
La Charroterie
St Peter Port, Guernsey
GY1 1FH
Tel +44 (0) 1481 717000
Fax +44 (0) 1481 717321
www.gov.gg

9 March 2016

Dear Financial Secretary

Further to your letter of 29 February 2015 to Guernsey's Chief Minister, I can confirm that on 7 March Guernsey's Policy Council agreed the proposed Arrangement, further amending the 1955 Arrangement between Her Majesty's Government and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income at Appendix 1 of your letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof. This letter together with your letter and its Appendix 1 constitute our mutual acceptance of the provisions of the Agreement and the Arrangement between Guernsey and Her Majesty's Government.

In agreeing to this amendment to the existing Double Taxation Agreement (DTA) with Her Majesty's Government, we have done so in accord with our longstanding policy of partnership with the HM Treasury and HM Revenue & Customs to prevent the use of Guernsey for aggressive tax avoidance, tax fraud and tax evasion. The amendment incorporates into the existing DTA wording that is in the OECD's Model DTA, and which we would expect to be in any new DTA that emerges from the renegotiation of our existing DTA, shortly to commence. It also is consistent with the OECD BEPS principles to which we have previously indicated we are generally committed.

I also note your confirmed announcement on 16 March 2016 on this Arrangement, namely:

Guernsey/United Kingdom Double Taxation Agreement

A Protocol amending the Double Taxation Agreement between the UK and Guernsey has been entered into by an exchange of letters between the Governments of Guernsey and the United Kingdom. The amendments remove a potential loophole that may have allowed non-UK resident property developers to avoid income tax or corporation tax in the UK in certain circumstances and are effective from 16 March 2016. The agreement of this protocol demonstrates the UK's and Guernsey's joint commitment to working together to counter tax avoidance and evasion.

Yours sincerely,

Gavin St Pier
Minister

cc Chief Minister, Policy Council