

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH POLAND AND
QATAR

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Revision of the Double Taxation Arrangements made with Poland and Qatar”, dated 23 August 2022, they are of the opinion:-

1. To declare that:

- (a) The “Protocol Amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to certain Income of Individuals signed in London on 8th October, 2013” and the “Protocol Amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, signed by Guernsey on 19 May 2022 and 21 June 2022 respectively, have been made with the government of another 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 those territories; and
- (b) it is expedient that the double taxation agreements that Guernsey has with Poland and Qatar, signed on 8 October 2013 and 22 February 2013 respectively, as so amended, should have effect, with the consequence that those Agreements shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH POLAND AND
QATAR

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
Guernsey

23rd August, 2022

Dear Sir

1. Executive Summary

- 1.1 On 19 May 2022, Guernsey entered into a “Protocol amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013”.
- 1.2 On 21 June 2022, Guernsey entered into a “Protocol amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”.
- 1.3 The principal purpose of a double taxation agreement (“DTA”) is for two governments to agree procedures for the prevention of double taxation – that is, taxation under the laws of both territories in respect of the same income – and tax avoidance and evasion, with respect to their domestic taxes.
- 1.4 In recent years, the Organisation for Economic Development & Co-operation (“OECD”) has been developing the Base Erosion & Profit Shifting (“BEPS”) initiative which is aimed at combatting tax avoidance. One outcome of the BEPS initiative was the creation of a multilateral instrument which committed jurisdictions could sign. Once the provisions of the multilateral instrument are adopted into domestic legislation by a signatory, all DTAs affected by the multilateral instrument are revised accordingly, and are then compliant with BEPS minimum standards.

- 1.5 Whilst Guernsey signed the multilateral instrument, in 2017, not all of Guernsey's pre-existing DTAs (including the DTAs with Poland and Qatar) are covered by it. If those DTAs not covered by the multilateral instrument are to meet BEPS minimum standards, to which Guernsey is committed, they have to be amended by bilateral agreement.
- 1.6 The new Protocols represent the outcome of such bilateral agreements held with Poland and Qatar. The original DTAs (that the new Protocol will amend) were signed with Poland on 8 October 2013, and with Qatar on 22 February 2013.
- 1.7 The purpose of this policy letter is to seek States' approval, in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended ("the Income Tax Law") for the provisions of the new Protocols to be given domestic effect.

2. Background

- 2.1 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."

Section (1AA) provides that:

"The arrangements that may be specified in a Resolution under this section include (without prejudice to subsection (1A) –

- (a) arrangements amending, modifying or extending –
 - (i) double taxation arrangements entered into by or otherwise binding upon Guernsey, or
 - (ii) any arrangements of a description set out in paragraph (b) for the time being specified in a Resolution under this section,

including, without limitation, the arrangements effected by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done at Paris on the 24th November, 2016, and

- (b) other arrangements containing provisions that relate to, or are consequential, incidental, supplementary or ancillary to, such double taxation arrangements or double taxation matters."

Section (1A) further provides that:

“For the avoidance of doubt, arrangements made with the government of another territory and specified in a Resolution under this section may, without limitation, and provided that the main purpose or one of the main purposes of the arrangements is that they are made with a view to affording relief from double taxation, make provision in respect of the following matters –

- (a) the apportionment of taxing rights,
- (b) variations in the rates of tax, and methods of computing a person's liability to tax, in relation to particular sources of income,
- (c) the exemption from tax of particular sources of income,
- (d) other methods of affording relief from double taxation, in addition to those provided for by section 173 (tax credits), and
- (e) consequential, incidental, supplementary and transitional matters.”.

The original DTAs, signed with Poland in October 2013, and with Qatar in February 2013, were subject to Resolutions of the States, under Section 172(1) on 30 January 2014 and 28 June 2013, respectively. Section 172(1) of the Income Tax Law would also be the mechanism for subsequent amendments to existing DTAs.

- 2.2 Guernsey currently has fully comprehensive DTAs with 14 jurisdictions. Guernsey also has “partial” DTAs (dealing with such issues as personal tax matters; shipping and aircraft and mutual agreement procedures) with 12 jurisdictions. The DTA with Poland is a partial DTA, covering certain income of individuals. The DTA with Qatar is a fully comprehensive DTA.
- 2.3 In recent years, in response to a request from the G20, the OECD has been working on the Base Erosion and Profit Shifting (“BEPS”) initiative.
- 2.4 BEPS is based on the premise that, in an increasingly interconnected world, national tax laws, many of which have their origins over 100 years ago, have not always kept pace with global corporations, fluid movement of capital and, most recently, the rise of the digital economy, leaving gaps and mismatches that can be exploited, in some cases to generate double non-taxation, which can undermine the fairness and integrity of tax systems.
- 2.5 Part of the BEPS outcomes involved designing a multilateral instrument to permit the current existing global framework of DTAs (numbering over 3,000) to be

revised to meet BEPS objectives, as the alternative would be extensive bilateral negotiations, which could take decades to achieve.

- 2.6 Guernsey was amongst the first signatories of the multilateral instrument, in June 2017.
- 2.7 None of the “partial” DTAs entered into by Guernsey (see 2.2. above), including the DTA with Poland, were listed under the multilateral instrument, either by Guernsey or the partner jurisdiction. This was because they dealt with only limited aspects of what is normally covered by a DTA, and application of the full suite of provisions of the multilateral instrument to the partial DTAs was not considered appropriate.
- 2.8 Contact was made with the relevant jurisdictions, offering to negotiate amendments to the partial DTAs, on a bilateral basis, to make them compliant with BEPS principles. Poland (amongst others) accepted the proposal.
- 2.9 As a consequence, the new Protocol contain revisions to the original agreement with Poland as follows:
 - (a) for the title to be modified to refer to the parties’ intention to eliminate double taxation with respect to income of certain individuals and prevent tax evasion and avoidance.
 - (b) for the preamble text to be modified to refer to the parties’ intention to eliminate double taxation with respect to the taxes covered by the agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreements for the indirect benefit of residents of third jurisdictions).
 - (c) amending the existing Article containing the “Mutual agreement procedure” to make it explicit that, where a person considers that the actions of one or both of the parties to the agreement result, or will result, for that person in taxation not in accordance with the provisions of the agreement, he may, irrespective of the remedies provided by the domestic law of the parties, present the case to the competent authority of the party of which he is resident or, where the case relates to the “Non-discrimination” Article of the DTA, to the party of which he is a national.
 - (d) a revision to reflect the change in title of Guernsey’s competent authority, for the purposes of the DTA, from Director of Income Tax to Director of the Revenue Service.

- (e) a provision is added to specify that a benefit under the agreements shall not be granted in respect of an item of income, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.
- 2.10 With regard to the Protocol with Qatar, it was agreed that, as it was desirable for amendments to be made to the DTA that went beyond BEPS issues, it was preferable to amend the DTA by bilateral negotiation, rather than by listing the DTA under the MLI.
- 2.11 As a consequence, the new Protocol contain revisions to the original agreement with Qatar as follows:
- (a) for the preamble text to be modified to refer to the parties' intention to eliminate double taxation with respect to the taxes covered by the agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreements for the indirect benefit of residents of third jurisdictions).
 - (b) to update the definition of "Guernsey", as our preferred version that is used in international tax agreements had changed, since the original DTA was signed in 2013.
 - (c) a revision to reflect the change in title of Guernsey's competent authority, for the purposes of the DTA, from Director of Income Tax to Director of the Revenue Service.
 - (d) replacing the existing Article containing the "Mutual agreement procedure" with new text to:
 - I. make it explicit that, where a person considers that the actions of one or both of the parties to the agreement result, or will result, for that person in taxation not in accordance with the provisions of the agreement, he may, irrespective of the remedies provided by the domestic law of the parties, within 3 years from first notification of the action, present the case to the competent authority of either party;

- II. clarify that the competent authorities will endeavour to agree on how interest, late payment surcharges and administrative penalties would be dealt with in a mutual agreement procedure case;
 - III. agreeing that in a mutual agreement procedure case, assessment and collection procedures are suspended while the process is pending; and
 - IV. providing a mechanism for communication between the competent authorities to be through a joint commission for the purposes of reaching a conclusion in a mutual agreement procedure case.
- (e) a provision is added to specify that a benefit under the agreements shall not be granted in respect of an item of income, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.

2.12 Copies of both Protocols are attached.

3. Recommendations

3.1 The Policy & Resources Committee is pleased to recommend that the States should declare that:

- (a) the “Protocol amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013”, signed on 19 May 2022, and the “Protocol amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, signed on 21 June 2022, have each been made with the government of another 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 those territories; and
- (b) it is expedient that the double taxation agreements that Guernsey has with Poland, signed on 8 October 2013, and with Qatar, signed on 22 February 2013, as amended by the said Protocols, should have effect, with the consequence that those Agreements, as so amended, shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax

Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

4. Compliance with Rule 4

4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

4.2 The following information is provided in conformity with Rule 4(1):

- (a) the Propositions contribute to the States' objectives and policy plans by continuing to conform to the international taxation standards that it has agreed to;
- (b) no joint working or consultation has taken place with other Committees or relevant stakeholders in the preparation of the propositions;
- (c) the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications;
- (d) the Propositions do not request the States to approve funding.

4.3 For the purposes of Rule 4(2):

- (a) the Propositions relate to the duties and powers of the Policy & Resources Committee in raising and collecting taxes and revenues and executing and requesting the extension of international agreements to which the Island is invited to acquiesce;
- (b) the Propositions have the unanimous support of the Policy & Resources Committee.

Yours faithfully

P T R Ferbrache
President

H J R Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

PROTOCOL
AMENDING THE AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE REPUBLIC OF POLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT
TO CERTAIN INCOME OF INDIVIDUALS
SIGNED IN LONDON ON 8TH OCTOBER, 2013

The States of Guernsey and the Republic of Poland ("the Parties"), desiring to amend the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013 ("the Agreement"),

Have agreed as follows:

Article I

The title of the Agreement shall be deleted and replaced by the following:

“Agreement between the States of Guernsey and the Republic of Poland for the elimination of double taxation with respect to certain income of individuals and the prevention of tax evasion and avoidance”.

Article II

The Preamble to the Agreement shall be deleted and replaced by the following:

“The States of Guernsey and the Republic of Poland,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to certain income of individuals and the prevention of tax evasion and avoidance with respect to the taxes covered by this Agreement, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows: “.

Article III

In Article 3 (Definitions) of the Agreement, clause i) of subparagraph d) of paragraph 1 shall be deleted and replaced by the following:

“(i) in the case of Guernsey, the Director of the Revenue Service, or their delegate, and”.

Article IV

In Article 13 (Mutual agreement procedure) of the Agreement, the first sentence of paragraph 1 shall be deleted and replaced by the following:

“Where an individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 12, to that of the Contracting Party of which he is a national.”.

Article V

The following new Article 13A (Entitlement to Benefits) shall be added to the Agreement:

"ARTICLE 13A
Entitlement to Benefits

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”.

Article VI

1. This Protocol, shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective Parties have notified each other in writing that the necessary internal procedures for entry into force in their respective Parties have been complied with, and its provisions shall have effect for taxable years and periods beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Protocol has entered into force.

2. This Protocol, shall remain in force as long as the Agreement shall be in force, unless the Protocol is terminated by one of the Parties. In such case, the Protocol shall cease to have effect on the first day of January in the calendar year following that in which the other Party receives the notice of termination. Such note should be delivered at least 6 months before the end of the calendar year.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Parties, have signed this Protocol.

DONE at London, on the 19th day of May, 2022, in duplicate, each in the English and Polish languages, both texts being equally authentic.

For the States of Guernsey

For the Republic of Poland

PROTOCOL

AMENDING THE

AGREEMENT BETWEEN

THE GOVERNMENT OF GUERNSEY

AND

THE GOVERNMENT OF THE STATE OF QATAR

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

The Government of Guernsey and the Government of the State of Qatar ("the Parties"), desiring to amend the Agreement between the Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on 22nd February 2013 ("the Agreement"), have agreed as follows:

ARTICLE 1

The Preamble to the Agreement shall be modified to include the following text immediately before the second paragraph of the existing Preamble text:

“Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),”.

ARTICLE 2

In paragraph 1 of Article 3 (General Definitions):

- (i) The definition of the term "Guernsey" shall be deleted and replaced with the following:

"the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and the territorial sea adjacent thereto, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;"

- (ii) The definition of the term "competent authority" in the case of Guernsey shall be deleted and replaced with the following:

"in the case of Guernsey, the Director of the Revenue Service or her/his delegate;"

ARTICLE 3

1. Paragraph 1 of Article 25 (Mutual Agreement Procedure) shall be deleted and replaced with the following:

“Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party. 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 the Agreement.”.

2. The following text is added after the first sentence of Paragraph 2 of Article 25 (Mutual Agreement Procedure) of the Agreement:

“The competent authorities shall also endeavour to agree on the application of domestic law provisions regarding interest, late payment surcharges and administrative penalties related to the case.”

3. The following text is added to the end of Paragraph 2 of Article 25 (Mutual Agreement Procedure) of the Agreement:

“Assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending.”

4. Paragraph 4 of Article 25 of the Agreement is deleted and replaced by the following:

"4. The competent authorities of the Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article."

ARTICLE 4

Immediately after Article 27 (Members of Diplomatic Missions and Consular Posts) the following Article shall be added:

"ARTICLE 27A

ENTITLEMENT TO BENEFITS

1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which the request has been made will consult with the competent authority of the other Party before rejecting a request made under this paragraph by a resident of that other Party."

ARTICLE 5

Each Party shall notify the other Party in writing of the completion of the procedures required by its laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall have effect from that date.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at _____, on the
day
of _____, 2022 in the English and Arabic languages, all texts being equally
authentic.

**For the Government of
Guernsey**

**For the Government of
the State of Qatar**