

**Guernsey’s policy on Tax Information Exchange Agreements (“TIEAs”)
and Double Taxation Arrangements (“DTAs”)**
(Updated to 7 January 2019)

Background

The Government of Guernsey has a long-standing commitment to being a well-regulated, co-operative and transparent international finance centre. In September 2015, Moneyval published its report on Guernsey in which it stated that Guernsey is a major international finance centre with a mature legal and regulatory system. The legislative structure to prosecute money laundering cases reflects the international standards and the legal framework governing confiscation is comprehensive.

Guernsey was included on the first OECD exchange of tax information “White List” established in 2009. In 2010, Guernsey was subject to the first of a two-phase peer review of its tax information exchange frameworks. Phase 2 took place in late 2012. The Report, which was adopted by the Global Forum in April 2013, found Guernsey’s legislative and administrative regime to have in place all of the elements necessary for meeting the international standards on transparency and information exchange (with only minor elements needing improvement). As a consequence, in November 2013, the Global Forum rated Guernsey as “Largely Compliant” overall, a rating that it shared with jurisdictions such as the UK and the USA. Guernsey underwent its 2nd round review in August 2017. The Report which was adopted by the Global Forum in July 2018 continued to find Guernsey’s legislative and administrative regime had in place all of the elements necessary for meeting the international standards on transparency and information exchange, and the practice of the actual exchange of information with requesting partner jurisdictions, over the three year review period, demonstrated Guernsey’s effectiveness. This resulted in the Global Forum increasing Guernsey’s rating to “Compliant” (the highest rating).

Introduction

Guernsey has been fully committed to the OECD Project on Transparency and Exchange of Information for Tax Purposes for many years. Guernsey commenced negotiations on its first TIEA at the end of 2001, gave formal commitment to the OECD process in February 2002 and concluded its first TIEA, with the United States, in September 2002.

In addition to TIEAs and DTAs, Guernsey signed (on 13 December 2013) an Inter-Governmental Agreement with the USA in relation to FATCA, and a similar agreement was signed with the UK on 22 October 2013. Guernsey participated in the process of rolling out such agreements as an international standard (the “Common Reporting Standard” or “CRS”) by being a member of the Global Forum Working Group on Automatic Exchange of

Information, part of the Early Adopters Initiative for CRS and, in October 2014, by signing a Multilateral Competent Authority Agreement giving a commitment to enter into automatic exchange of information relationships with a significant number of other jurisdictions, the first exchange being scheduled to take place in 2017. Furthermore, in December 2013, the States of Guernsey agreed that Guernsey should participate in the Convention on Mutual Administrative Assistance in Tax Matters (“the Multilateral Convention”). This became effective from 1 August 2014.

Guernsey has participated in OECD, and latterly Global Forum, meetings on an active basis and has also nominated six Assessors for the Global Forum Peer Review process. To date, Phase 1, Phase 2 and Supplementary reviews have been undertaken on Austria and BVI; Phase 1 and 2 reviews of the Dominican Republic, Grenada, Montserrat and St Kitts and Nevis; a Phase 2 review of Switzerland and a combined Phase 1 and 2 Review has been carried out on Turkey.

Guernsey has also provided Assessors, for the second round of reviews, for Australia and Ireland, The Bahamas, Singapore, Aruba, and Croatia. An Assessor has also been allocated to the review of Peru (to commence in 2019).

Another demonstration of Guernsey’s involvement in the work of the Global Forum is the proposal, made by Guernsey, during the Bermuda Global Forum Meeting, in June 2011, that a separate forum for Competent Authorities should be established. This proposal was adopted by the Global Forum and the inaugural meeting of this body took place during May 2012, in Madrid (a second meeting was held in May 2013, in the Netherlands, the third in Mexico City, in December 2014, the fourth meeting in Rome, in May 2015, the fifth in Mauritius in July 2016 and the sixth in Panama, in June 2017).

Policy overview

In summary, therefore, Guernsey has not only committed to the process but has demonstrated that commitment in the years since 2002. As an offshore financial centre, Guernsey is often, unfairly, criticised as facilitating tax evasion and tax avoidance. Guernsey values its international reputation as a financial centre in the premier league of transparency and information exchange. To defend that reputation, Guernsey often finds it appropriate to go one step beyond what may be expected of it in satisfying basic international standards.

The following are quotations from the “Handbook for Peer Reviews 2016-2020”, published by the Global Forum:

“The standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange agreement.”

“Better transparency and information exchange for tax purposes are keys to ensuring that corporate and individual taxpayers have no safe haven to hide their income and assets and that they pay the right amount of tax in the right place.”

Guernsey believes that the concept of “no safe haven” referred to by the Global Forum must, ultimately, envisage a worldwide network, where every territory has a TIEA or DTA, or other form of agreement to exchange tax information on request, with every other territory. Accepting that there may be economic, political or social reasons why success in achieving this should be considered as an aspiration, rather than wholly practical, nevertheless, and for the above reasons, and in order to give substance to Guernsey’s commitment to the process, and to ensure that it safeguards its international reputation, Guernsey has the overall policy of actively negotiating TIEAs or DTAs with as many “relevant” jurisdictions, as defined in the Handbook, as possible. In doing this, however, Guernsey will take into account available resources and such economic, political and social factors.

Because, in the early years of the OECD process, Guernsey received relatively few requests from OECD Member Countries to negotiate TIEAs or DTAs, Guernsey took the decision to actively approach all OECD, EU and G20 Member Countries, with which it was not already negotiating, in order to request that negotiations commence.

Guernsey’s strategic approach means that it has never prioritised the negotiation of a TIEA or a DTA with a country of no, or little, economic significance over a TIEA or a DTA with a country with which it has substantial relevant economic ties.

Present position

To date, Guernsey has signed 60 **TIEAs** with:

- Argentina on 22 July 2011(by Guernsey)/ 28 July 2011(by Argentina) (in force with effect from 4 January 2012)#
- Australia on 7 October 2009 (in force with effect from 27 July 2010)#
- Austria on 14 May 2014 (in force with effect from 23 November 2014)*
- Bahamas on 29 July 2011(by Guernsey) / 8 August 2011(by Bahamas) (in force with effect from 28 March 2012). See below re amendment.
- Belgium on 24 April 2014 (by Belgium) and 7 May 2014(by Guernsey) (in force with effect from 10 May 2018).*

- Bermuda on 19 September 2013(by Guernsey)/ 23 October 2013 (by Bermuda) (in force with effect from 5 April 2014)
- Botswana on 10 May 2013 (not yet in force)
- Brazil on 6 February 2013 (not yet in force)#
- British Virgin Islands on 12 April 2013 (by BVI) and 17 April 2013 (by Guernsey)(in force with effect from 11 November 2014). See below re amendments.
- Bulgaria on 20 May 2015 (by Bulgaria) and on 11 June 2015 (by Guernsey) (in force with effect from 21 March 2016)*
- Canada on 19 January 2011(in force with effect from 18 January 2012)#
- Cayman Islands on 29 July 2011 (in force with effect from 5 April 2012). See below re amendment.
- Chile on 4 April 2012 (by Guernsey) and 24 September 2012 (by Chile) (in force with effect from 2 August 2016)
- China on 27 October 2010 (in force with effect from 17 August 2011)#
- Costa Rica on 5 March 2014 (in force with effect from 15 December 2018)
- Czech Republic on 15 September 2011(in force with effect from 9 July 2012)*
- Denmark on 28 October 2008 (in force with effect from 6 June 2009)*
- Faroe Islands on 28 October 2008 (in force with effect from 21 August 2009)
- Finland on 28 October 2008 (in force with effect from 5 April 2009)*
- France on 24 March 2009 (in force with effect from 4 October 2010)*#
- Germany on 26 March 2009 (in force with effect from 22 December 2010)*#
- Gibraltar on 22 October 2013 (in force with effect from 12 March 2014). See below re amendment.
- Greece on 29 September 2010 (by Greece) / 8 October 2010(by Guernsey) (in force with effect from 7 March 2014)*
- Greenland on 28 October 2008 (in force with effect from 25 April 2009)
- Hungary on 11 September 2013 (in force with effect from 7 March 2014)*
- Iceland on 28 October 2008 (in force with effect from 26 November 2009)
- India on 20 December 2011 (in force with effect from 11 June 2012)#
- Indonesia on 27 April 2011 (in force with effect from 22 September 2014)#
- Ireland on 26 March 2009 (in force with effect from 10 June 2010)*
- Italy on 5 September 2012 (in force with effect from 10 June 2015)*#
- Japan on 6 December 2011 (in force with effect from 23 August 2013)#
- Korea (Republic of)# on 23 September 2015 (in force with effect from 21 December 2016)
- Latvia on 5 September 2012 (in force with effect from 4 October 2013)*
- Lesotho on 3 July 2013 (in force with effect from 3 January 2015)
- Lithuania on 20 June 2013 (in force with effect from 8 March 2014)*
- Macau on 3 September 2014 (in force with effect from 26 April 2015)
- Mauritius on 6 February 2013 (in force with effect from 5 July 2013)

- Mexico on 10 June 2011 (by Mexico)/27 June 2011 (by Guernsey) (in force with effect from 24 March 2012)#
- Montserrat on 7 April 2014 (by Guernsey)/19 May 2014 (by Montserrat) (in force with effect from 1 November 2016)
- Netherlands on 25 April 2008 (in force with effect from 11 April 2009)*
- New Zealand on 21 July 2009 (in force with effect from 8 November 2010)
- Norway on 28 October 2008 (in force with effect from 8 October 2009)
- Poland on 6 December 2011 (in force with effect from 1 November 2012)*
- Portugal on 9 July 2010 (in force with effect from 16 March 2018)*
- Romania on 12 January 2011 (by Romania)/17 January 2011 (by Guernsey) (in force with effect from 22 January 2012)*
- San Marino on 29 September 2010 (in force with effect from 16 March 2011). See below re amendment.
- Seychelles on 20 December 2011 (in force with effect from 22 July 2012). See below re amendment
- Slovakia on 22 October 2013 (in force with effect from 26 January 2015)*
- Slovenia on 26 September 2011 (in force with effect from 9 August 2012)*
- South Africa on 21 February 2011 (in force with effect from 26 February 2012)#
- Spain on 10 November 2015 (not yet in force)*
- St Kitts and Nevis on 18 January 2012 (by St Kitts and Nevis)/ 7 February 2012 (by Guernsey) (in force with effect from 14 April 2013)
- Swaziland on 3 July 2013 (by Guernsey)/30 August 2013 (by Swaziland) (in force with effect from 12 March 2015)
- Sweden on 28 October 2008 (in force with effect from 23 December 2009)*
- Switzerland on 11 September 2013 (in force with effect from 14 October 2014)
- Turkey on 13 March 2012 (in force with effect from 6 October 2017)#
- Turks and Caicos on 24 April 2014 (by Guernsey) / 24 July 2014 (by Turks and Caicos) (in force with effect from 17 August 2015). See below re amendment.
- United Kingdom on 20 January 2009 (in force with effect from 27 November 2009)*#
See below re amendment.
- United States on 19 September 2002 (in force with effect from 30 March 2006)#. See below re amendment.
- Uruguay on 2 July 2014 (in force with effect from 6 October 2017)

(* Indicates an EU Member State)

(# Indicates a G20 Member)

It can be seen, therefore, that Guernsey's existing TIEAs cover:

- 16 G20 Members

- 23 EU Member States

In addition, the TIEAs with:

- The Bahamas, was amended by Protocol (on 12 April 2017, by The Bahamas, and on 16 May 2017, by Guernsey,) to permit the making of arrangements for automatic exchange of information (**not yet in force**).
- the British Virgin Islands, was amended by Protocol (on 25 November 2014, by Guernsey, and on 11 December 2014, by BVI) to permit the making of arrangements for automatic exchange of information (in force with effect from 3 September 2015).
- the British Virgin Islands, was amended by Protocol (signed on 8 October 2015, by Guernsey, and 5 November 2015 by BVI) to amend Article 11 (“NO PREJUDICIAL OR RESTRICTIVE MEASURES”) (**not yet in force**).
- the Cayman Islands, was amended by Protocol (on 10 September 2015, by Cayman and on 8 October 2015, by Guernsey,) to permit the making of arrangements for automatic exchange of information (in force with effect from 28 June 2016).
- Gibraltar, was amended by Protocol (on 23 March 2015, by Guernsey, and on 6 April 2015, by Gibraltar) to permit the making of arrangements for automatic exchange of information (in force with effect from 7 October 2015).
- San Marino, was amended by Protocol (signed on 14 December 2017, by San Marino, and 19 December 2017 by Guernsey) to amend Article 12 (“NO PREJUDICIAL OR RESTRICTIVE MEASURES”) (in force with effect from 23 August 2018).
- Seychelles, was amended by Protocol (on 12 August 2016, by Seychelles, and on 1 September 2016, by Guernsey) to delete Article 11 (“NO PREJUDICIAL OR RESTRICTIVE MEASURES”) (in force with effect from 14 June 2017).
- Turks and Caicos, was amended by Protocol (on 29 June 2016, by Turks and Caicos, and on 15 August 2016, by Guernsey) to permit the making of arrangements for automatic exchange of information and to amend Article 11 (“NO PREJUDICIAL OR RESTRICTIVE MEASURES”) (in force with effect from 23 March 2017).
- the United Kingdom, was amended by exchange of letters (on 23 October 2013) to permit the making of arrangements for automatic exchange of information (in force with effect from 29 July 2014).

- the United States, was amended by Protocol (on 13 December 2013) to permit the making of arrangements for automatic exchange of information (in force with effect from 26 August 2015).

Similar amendments to the existing TIEA, to permit the making of arrangements for automatic exchange of information, are under discussion with Montserrat, and discussions are ongoing with Bermuda for an exchange of letters to achieve the same purpose..

Ongoing work

Guernsey has concluded discussions on **TIEAs** with the following countries and is ready to make arrangements to sign the Agreements as soon as the other territories have completed their internal requirements enabling them to sign:

- Ghana
- Kenya
- Malawi
- Zambia

In addition to the above, Guernsey has virtually concluded **TIEA** negotiations with:

- Anguilla

Discussions are currently ongoing with Dominica regarding the negotiation of a TIEA (to permit implementation of the CRS).

(Negotiations with Colombia and Malaysia have been suspended as they are now signatories to the Multilateral Convention, and their EOI relationship with Guernsey will be managed through that instrument).

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Guernsey is willing to negotiate DTAs in place of, or in addition to, TIEAs, and it is indeed the policy of some countries to negotiate DTAs in preference to TIEAs.

Partial DTAs (dealing with such issues as personal tax matters, shipping and aircraft and/or mutual agreement procedures) have also been signed with 12 countries:

- Australia on 7 October 2009 (in force with effect from 24 August 2011)#
- Denmark on 28 October 2008 (in force with effect from 4 November 2009)*
- Faroes on 28 October 2008 (in force with effect from 15 January 2010)

- Finland on 28 October 2008 (in force with effect from 11 November 2009)*
- Greenland on 28 October 2008 (in force with effect from 19 November 2009)
- Iceland on 28 October 2008 (in force with effect from 26 November 2009)
- Ireland on 26 March 2009 (in force with effect from 10 June 2009)*
- Japan (contained in the same agreement as the TIEA) on 6 December 2011 ((in force with effect from 23 August 2013))#
- New Zealand (contained in the same agreement as the TIEA) on 21 July 2009 (in force with effect from 8 November 2010)
- Norway on 28 October 2008 (in force with effect from 5 November 2009)
- Poland on 8 October 2013 (in force with effect from 1 October 2014))*
- Sweden on 28 October 2008 (in force with effect from 23 December 2009)*

Guernsey has had 2 **comprehensive DTAs** dating from the 1950s (with the United Kingdom and Jersey). Guernsey has more recently signed 13 further comprehensive DTAs with:

- Cyprus on 15 July 2014 (by Cyprus) and 29 July 2014 (by Guernsey)(in force with effect from 4 March 2015)*
- Hong Kong on 28 March 2013 (by Guernsey) and 22 April 2013 (by Hong Kong) (in force with effect from 5 December 2013)
- Isle of Man on 24 January 2013 (in force with effect from 5 July 2013)
- Jersey (a revision to Guernsey's DTA with Jersey dating from the 1950s) on 24 January 2013 (in force with effect from 9 July 2013)
- Liechtenstein on 5 June 2014 (by Liechtenstein)/11 June 2014 (by Guernsey)(in force with effect from 30 April 2015)
- Luxembourg on 10 May 2013 (in force with effect from 8 August 2014)*
- Malta on 12 March 2012 (in force with effect from 10 March 2013)*
- Mauritius on 17 December 2013 (in force with effect from 30 June 2014)
- Monaco on 7 April 2014 (by Guernsey) and 14 April 2014 (by Monaco)(in force with effect from 9 May 2015)
- Qatar on 22 February 2013 (in force with effect from 11 July 2013)
- Seychelles on 27 January 2014 (in force with effect from 12 October 2016)
- Singapore on 6 February 2013 (in force with effect from 26 November 2013)
- United Kingdom (a revision to Guernsey's DTA with the United Kingdom dating from the 1950s) on 2 July 2018 (in force with effect from 7 January 2019)

In June 2017, Guernsey signed the Base Erosion and Profits Shifting (BEPS) Multilateral Instrument, which, after ratification by all parties, will revise the majority of Guernsey's comprehensive DTAs, so that they comply with the minimum standards of BEPS, as they relate to DTA issues. Discussions are being held with the Isle of Man, Jersey and Qatar, and

partial DTA partners, to establish whether they wish to revise those agreements for BEPS purposes.

The following **comprehensive DTA** negotiations have been completed and arrangements to sign the Agreement are currently being discussed:

- Bahrain
- Gibraltar

The following **comprehensive DTA** negotiations will shortly commence or have commenced and are ongoing:

- Estonia
- United Arab Emirates

Discussions with Panama and Thailand have been terminated, as Panama has signed, and Thailand is considering signing, the Multilateral Convention (which will provide the same exchange of information mechanisms that the DTA would have provided). Discussions with Bermuda regarding a DTA have been terminated as an alternative agreement to facilitate the CRS is now under discussion.

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It should be clear from the above, therefore, that Guernsey has actively sought TIEAs and DTAs with its major “trading partners”. Where negotiated agreements have not yet been signed this is solely due to the fact that the internal requirements necessary for them to move to signature have not yet been completed by both parties. Guernsey has never refused, of its own accord, to negotiate a TIEA or DTA with any territory.

Guernsey imposes income tax and has an active regime of detecting and investigating avoidance and evasion. For that reason, Guernsey has an interest in seeking TIEAs and DTAs with those territories where experience shows Guernsey residents may conduct transactions.

The future

Guernsey is now in the position where it has negotiated, or has ongoing / forthcoming negotiations, or is in discussion regarding a TIEA/DTA with, all OECD, G20 and EU economies, except for Croatia, Israel and Russia.

The Global Forum is making a priority of tax information exchange with developing countries (and promoting multilateral negotiations/instruments for this purpose). Guernsey has already taken the initiative in this regard in relation to some Members of SADC (South African Development Community) as it was the first offshore financial centre to have actively sought negotiations with Members of SADC, and it is hoped that other Members of SADC and/or the African Tax Administration Forum (“ATAF”) will join in the process. Guernsey would be open, therefore, to not only expanding further its exchange of information agreement network with developing countries within Africa, but also in other continents.

In addition, from time to time, Guernsey will be approached by jurisdictions. As indicated above, the terms of reference for the Peer Review process clearly indicate that:

“The standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.”

Where such approaches are made, and the jurisdiction concerned is covered by the existing Letter of Entrustment from the United Kingdom, and with political agreement for it to do so, the Guernsey Income Tax Office is prepared to consider entering into negotiations (absent any overriding reason why that should not be the case, such as political or social turmoil which has occurred since the jurisdiction was white listed).

Where such approaches are made by territories which are not covered by the existing Letter of Entrustment, Guernsey would evaluate the approach and if it was considered that negotiations were in the best interests of Guernsey (whether for economic or reputational reasons) the Guernsey Income Tax Office would approach the Ministry of Justice in the United Kingdom to make a request for an extension of the Letter of Entrustment.

Summary

- Guernsey is politically and actively committed to the principles of transparency and the exchange of information for tax purposes.
- Guernsey stands ready to sign further TIEAs and DTAs which have already been negotiated, once the other jurisdictions are in a position to do so, and is now also participating in the Multilateral Convention.
- Guernsey has never refused to negotiate a TIEA or DTA with any territory.

- Guernsey has never prioritised the negotiation of a TIEA or a DTA with a country of no, or little, economic significance over a TIEA or a DTA with a country with which it has substantial relevant economic ties.

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7 January 2019

The text of all signed agreements can be accessed at:

<http://www.gov.gg/international-agreements>