

**AGREEMENT
BETWEEN
THE STATES OF GUERNSEY
AND
THE UNITED MEXICAN STATES
FOR THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS**

WHEREAS the States of Guernsey and the United Mexican States (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange Agreement with the United Mexican States;

WHEREAS the States of Guernsey on the 21st February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

Article 1
Scope of the Agreement

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. A requested Party is not obliged to provide information which is neither held by its authorities, nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - a) in the case of Mexico:
 - (i) federal income tax;
 - (ii) business flat rate tax; and
 - (iii) value added tax.
 - b) in the case of Guernsey:
 - (i) income tax; and
 - (ii) dwellings profits tax.

2. This Agreement shall apply also to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Parties. The competent authority of each Party shall notify the other of substantial changes in laws or measures which may affect the obligations of that Party pursuant to this Agreement.

Article 3
Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the suprajacent waters, and the air space of the national territory to the extent and under conditions established by international law;
 - b) "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - c) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. "Public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - e) "competent authority" means,

- (i) in the case of Mexico, the Ministry of Finance and Public Credit;
 - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
- f) "criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- g) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- h) "information" means any fact, statement, document or record in whatever form;
- i) "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- j) "person" means an individual, a company or any other body of persons;
- k) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- l) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- m) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;

- n) "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- o) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party;
- p) "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all appropriate information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 1, ownership information on all such persons; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and in all such cases ownership information on all such persons in an ownership chain;

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. In order to facilitate the processing of a request by the requested Party the requesting Party shall formulate the request with the greatest detail necessary. The request shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- d) the tax purpose for which the information is sought;

- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

Article 5
Tax Examinations Abroad

1. With reasonable notice, a Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may permit representatives of the competent authority of the first-mentioned Party to attend a tax examination in the territory of the second-mentioned Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Party conducting the examination.

Article 6
Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist where:

- a) the request is not made in conformity with this Agreement;
- b) the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

- c) the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

Article 7 *Confidentiality*

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8

Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 9

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.

3. The Parties shall agree on other forms of dispute resolution should this become necessary.

Article 10
Mutual Assistance Procedure

If both competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

Article 11
No Prejudicial or Restrictive Measures

1. A Party shall not apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or citizens of the other Party, so long as this Agreement is in force and effective.

2. For the purposes of this Article, "prejudicial or restrictive measures based on harmful tax practices" means measures applied by one Party to residents, nationals or citizens of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of paragraph 2 the term "prejudicial or restrictive measures" include the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

4. The provisions of this Agreement shall not prevent Mexico from applying its domestic tax provisions regarding thin capitalisation, controlled foreign corporation (preferential tax regimes) and back to back loans.

Article 12
Interpretation

The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organisation for Economic Cooperation and Development (OECD Model Agreement) when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

Article 13
Entry into Force

This Agreement shall enter into force 30 (thirty) days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect;

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 14
Termination

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may, after the expiration of 2 (two) years from the date of its entry into force, terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of 6 (six) months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE in Mexico City on this _____ day of _____ of two thousand and eleven and in Saint Peter Port, Guernsey on this _____ day of _____ of two thousand and eleven, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the States of Guernsey

For the United Mexican States

**Lyndon Sean Trott
Chief Minister**

**Ernesto Javier Cordero Arroyo
Minister**

PROTOCOL

Upon signing the Agreement for the exchange of information relating to tax matters, this day concluded between the States of Guernsey and the United Mexican States, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

For the purposes of subparagraph g) of paragraph 1, of Article 3, it is understood that the term “criminal tax matters” shall cover intentional conduct whether carried out before or after the entry into force of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed this Protocol.

Done in Mexico City on this _____ day of _____ of two thousand and eleven and in Saint Peter Port, Guernsey on this _____ day of _____ of two thousand and eleven, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the States of Guernsey

For the United Mexican States

**Lyndon Sean Trott
Chief Minister**

**Ernesto Javier Cordero Arroyo
Minister**