

**AGREEMENT BETWEEN HIS 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**

1. (1) The taxes which are the subject of this Arrangement are –
 - (a) In the United Kingdom

The income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).
 - (b) In Guernsey

The income tax (including super tax) (hereinafter referred to as “Guernsey tax”).
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Guernsey after this Arrangement has come into force.
2. (1) In this Arrangement, unless the context otherwise requires –
 - (a) [The term “United Kingdom” means Great Britain and Northern Ireland but, when used in a geographical sense, means the territory and territorial sea of Great Britain and Northern Ireland and the areas beyond that territorial sea over which Great Britain and Northern Ireland exercise sovereign rights or jurisdiction in accordance with their domestic law and international law.]¹
 - (b) [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.]²
 - (c) The terms “one of the territories” and “the other territory” mean the United Kingdom or Guernsey, as the context requires.
 - (d) The term “tax” means United Kingdom tax or Guernsey tax, as the context requires.
 - (e) The term “person” includes any body of persons, corporate or not corporate.
 - (f) The term “company” includes any body corporate.

¹ Subsection (a) amended by sec. 2 of the 2015 Amendment w.e.f. 01/01/16.

² Subsection (b) amended by sec. 3 of the 2015 Amendment w.e.f. 01/01/16.

- (g) The terms “resident of the United Kingdom” and “resident of Guernsey” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Guernsey for the purposes of Guernsey tax and any person who is resident in Guernsey for the purposes of Guernsey tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Guernsey if its business is managed and controlled in Guernsey.
- (h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Guernsey, as the context requires.
- (i) The terms “United Kingdom enterprise” and “Guernsey enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Guernsey; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or Guernsey enterprise, as the context requires.
- (j) The term “industrial or commercial profits” includes rentals in respect of cinematograph films.
- (k) The term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

- [(l) the term “taxation authority” means:

- (i) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (ii) in Guernsey, the Administrator of Income Tax or his delegate.]³
- (2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.
- (3) In the application of the provisions of this Arrangement by the United Kingdom or Guernsey, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, Guernsey, relating to the taxes which are the subject of this Arrangement.
3. (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Guernsey tax unless the enterprise is engaged in trade or business in Guernsey through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Guernsey but only so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Guernsey enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.
- (3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
- (4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.
- [4. (1) Where:
- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

³ Subsection (l) inserted by sec. 2 of 2009 Amendment w.e.f. 01/01/10.

- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

- (2) Where one of the territories includes in the profits of an enterprise of that territory - and taxes accordingly - profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the taxation authorities of the territories shall if necessary consult each other.⁴

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

[5A. Subject to the provisions of paragraph 6, pensions and other similar remuneration paid to an individual who is a resident of one of the territories shall be taxable only in that territory.]⁵

6. (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

- (2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

7. (1) An individual who is a resident of the United Kingdom shall be exempt from Guernsey tax on profits or remuneration in respect of personal (including professional) services performed within Guernsey in any year of charge if -

- (a) he is present within Guernsey for a period or periods not exceeded in the aggregate 183 days during that year, and

⁴ Section 4 replaced by sec. 3 of 2009 Amendment w.e.f. 01/01/10.

⁵ Section 5A inserted by sec. 4 of 2009 Amendment w.e.f. 01/01/10.

- (b) the services are performed for or on behalf of a person resident in the United Kingdom, and
 - (c) the profits or remuneration are subject to United Kingdom tax.
 - (2) An individual who is a resident of Guernsey shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if –
 - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
 - (b) the services are performed for or on behalf of a person resident in Guernsey, and
 - (c) the profits or remuneration are subject to Guernsey tax.
 - (3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.
8. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.
9. (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Guernsey tax payable, whether directly or by deduction, in respect of income from sources within Guernsey other than dividends or debenture interest payable by a company resident in Guernsey shall be allowed as a credit against any United Kingdom tax payable in respect of that income.
- (2) Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom other than dividends or debenture interest payable by a company resident in the United Kingdom shall be allowed as a credit against any Guernsey tax payable in respect of that income.
- (3) Where no credit is allowable under subparagraph (1) or subparagraph (2) of this paragraph in respect of tax on income subject to both Guernsey tax and United Kingdom tax, such relief from United Kingdom tax shall be allowed in respect of the double taxation as would have been allowed under the law in force in the United Kingdom if the present arrangement had not been made.

Provided that in a case to which the proviso to Section 24 of the United Kingdom Finance Act, 1920 applies, the relief allowable under this subparagraph shall be left out of account in the computations of tax to be made under the said proviso.

- (4) For the purpose of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.
- (5) Where Guernsey income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1951, then in the case of a person resident in Guernsey, the Guernsey income tax shall for the purposes of subparagraph (2) of this paragraph be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of Section 27 of the United Kingdom Finance Act, 1920 or Section 36 of the United Kingdom Finance Act, 1950.

[9A. Notwithstanding the preceding provisions of this Arrangement, any person who is assessed in accordance with, or is exempt from assessment by virtue of, the provisions of –

- (a) The Income Tax (Exempt Bodies) (Guernsey) Ordinances, 1989 and 1992,
or
- (b) The Income Tax (International Bodies) (Guernsey) Law, 1993,

in respect of any income or profits shall not be entitled under this Arrangement to any relief or exemption from United Kingdom tax which is computed by reference to that income or those profits, unless that person is assessed under those provisions on the whole of that income or those profits at a rate which is not less than the standard rate under section 36 of the Income Tax (Guernsey) Law, 1975, as amended.]⁶

- [9B. (1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the taxation authority of the territory of which he is a resident. 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 this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
- (2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the taxation authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other

⁶ Section 9A inserted by 1994 Amendment.

procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

- (3) The taxation authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.
 - (4) The taxation authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph.]⁷
10. (1) The taxation authorities of the United Kingdom and Guernsey shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.
- (2)⁸
11. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Guernsey as are necessary to give the Arrangement the force of law in the United Kingdom and Guernsey respectively, and shall thereupon have effect –
- (a) In the United Kingdom:
 - as respects income tax, for any year of assessment beginning on or after 6th April, 1951;
 - as respects sur-tax for any year of assessment beginning on or after 6th April, 1951;
 - as respects profits tax, in respect of the following profits –
 - (i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1951;
 - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
 - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Arrangement would be, chargeable for any year of assessment beginning on or after the 6th April, 1951.

⁷ Section 9B inserted by sec. 5 of 2009 Amendment.

⁸ Section 10(2) deleted by sec. 6 of 2009 Amendment.

(b) In Guernsey:

as respects income tax and super tax, for any year of charge beginning on the first day of January, 1951 and subsequent years.

12. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of June in any calendar year after the year 1952 give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective –

(a) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

as respects sur-tax for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and

as respects profits tax, in respect of the following profits -

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the next following calendar year.

(b) In Guernsey:

as respects income tax and super tax, for any year of charge beginning on or after the first day of January in the calendar year next following that in which such notice is given.

EXPLANATORY NOTE

**(This note is not part of the Arrangement
but is intended to indicate its general purport)**

Under the foregoing Arrangement with the United Kingdom, certain classes of income derived from one country by a resident of the other country are (subject to certain conditions) exempt from tax in the former country; these classes are shipping and air transport profits, certain trading profits not arising through a “permanent establishment”, and earnings of temporary business visitors.

Government salaries and pensions are normally taxed by the paying Government only.

Dividends and debenture interest payable by companies are not affected by the Arrangement. The system of unilateral relief by the United Kingdom which operates at present (Section 348 and Seventh Schedule Income Tax Act, 1952, which reproduces Section 36 and Sixth Schedule, Finance Act, 1950) will continue to apply to them. In other cases where income continues to be taxable in both countries, credit is to be given in the country of the taxpayer’s residence for the tax payable in the country of origin of the income.

Provision is included for the exchange of information between the taxation authorities of the two countries.

The Arrangement came into force on the 24th day of June, 1952, being the date of the making of the Double Taxation Relief (Taxes on Income) (Guernsey) Order, 1952, and is expressed to take effect, in Guernsey, as respects income tax and super tax, for any year of charge beginning on the first day of January 1951, and subsequent years.