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POLICY COUNCIL

BI-LATERAL AGREEMENTS WITH INDIVIDUAL EU MEMBER STATES ON THE TAXATION OF SAVINGS INCOME

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF

THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on MONDAY,** the **21st JUNE, 2004,** at 9.30 a.m.

POLICY COUNCIL

BI-LATERAL AGREEMENTS WITH INDIVIDUAL EU MEMBER STATES ON THE TAXATION OF SAVINGS INCOME

1. Introduction

1.1 Guernsey is a global finance centre with an outstanding international reputation attracting both high quality institutions and clients. The Island's financial services industry is fundamentally important to Guernsey's continued economic success, representing over 60% of the Island's export economy and directly employing some 25% of the workforce. The maintenance and enhancement of the finance centre is therefore crucial to the economic and social well-being of the Island.

1.2 The States of Guernsey has always recognised that as an international finance centre, the Island must maintain accepted standards. Guernsey has welcomed the move towards genuinely international benchmarks against which the Island can be judged favorably alongside finance centres such as the City of London. The International Monetary Fund (IMF) conducted the most recent assessment of Guernsey, and its report published in October 2003 commended the Island's comprehensive regulatory framework and supervisory structure. The IMF found that Guernsey had a high level of compliance with international standards of regulation in banking, insurance, securities, trust and company service provision, anti-money laundering and combating the financing of terrorism. This report is in line with previous assessments by international bodies such as the Financial Action Task Force and the Financial Stability Forum who judged Guernsey to be in the top tier of finance centres.

1.3 As a responsible member of the international community, the States of Guernsey has also accepted the need to respond constructively to international initiatives in taxation and transparency. Discussions at political and official level with the Organisation for Economic Co-operation and Development (OECD) on the Harmful Tax Practices initiative have been on-going since 1998. The Island was declared to be a co-operative jurisdiction by the OECD in February 2002 following the Advisory and Finance Committee's agreement to reflect the OECD's principles of exchange of information on request and transparency both in a general political commitment and in Tax Information Exchange Agreements (TIEAs) to be negotiated with individual jurisdictions. This agreement was on the basis that the Island already met the stated objectives on criminal tax information exchange and acceptance by the OECD of the need to achieve a level playing field in standards. In consequence, in the July 2002

Policy and Resource Planning debate, the States resolved to authorise the Committee to nominate a Member to execute TIEAs, that authority is now vested in the Policy Council. To date, one TIEA has been concluded with the United States in September 2002.

1.4 In responding to the EU Tax Package, the Advisory and Finance Committee followed this longstanding strategy of co-operation and engagement combined with insistence on a level playing field. On 4 June 2003, a day after EU Member States formally adopted the EU Tax Package, the Committee reaffirmed its political commitment to recommend to the States a retention tax on EU resident individuals' savings income in line with the terms of the EU Directive on Taxation of Savings Income provided that same measures were in place in Member States and the relevant dependent and associated territories and equivalent measures were applied in the named third countries. The attached Model Agreements (see Appendices A and B) have been negotiated with the EU High Level Group on Direct Taxation and this Policy Letter seeks the States approval of these Models and instructions to draft the necessary enabling legislation to begin the process of implementing the Island's obligations arising from international bi-lateral agreements.

2. Background to the EU Directive on Taxation of Savings Income

2.1 The EU Directive on Taxation of Savings Income is part of a wider EU Tax Package which was approved at the European Finance Ministers ECOFIN Council of 1 December 1997.

2.2 The EU Tax Package consists of three components:

- A Code of Conduct on Business Taxation;
- A Directive on Taxation of Savings Income;
- A Directive on Interest and Royalties.

2.3 The final measure does not directly affect Guernsey, but the Code of Conduct on Business Taxation and the Directive on Taxation of Savings Income are both of significance for the Island.

Code of Conduct on Business Taxation

2.4 The Code of Conduct on Business Taxation is not directly relevant to the attached Model Agreements, however it is an important part of the EU Tax Package. The Code is aimed at eliminating harmful business taxation measures which could damage the EU single market. These are essentially taxation measures which favour

non-resident business over resident business. The UK committed itself to 'apply' the principles of the Code in the Crown Dependencies and it's Caribbean Overseas Territories within the 'framework of the constitutional arrangements'.

2.5 The Code of Conduct Group, which is chaired by the UK Paymaster General, Dawn Primarolo, reviewed possible harmful tax measures in every Member State and in the Crown Dependencies and Caribbean Overseas Territories. As a result, in 1999 the Group listed a total of 66 measures which it considered harmful across the European Union and the dependent and associated territories of Member States. The following five regimes in Guernsey were listed:

Exempt Companies
International Loan Business
International Bodies
Offshore insurance companies
Insurance Companies

2.6 The Code of Conduct cannot apply directly to Guernsey because the Island is outside the EU fiscal territory and has domestic autonomy in taxation matters. However following a review of the Island's fiscal and taxation strategy, in December 2002 the Advisory and Finance Committee presented to the States the Budget Supplement 'Future Corporate Taxation Strategy' which is based on the introduction of a general corporate taxation rate of zero percent in 2008. This strategy is aimed at ensuring that Guernsey maintains its competitive and vibrant economy while still retaining decent social provision and public services. It also takes the principles of the Code of Conduct into account, as well as other developing international standards and competitive pressures.

2.7 When the EU Tax Package was finally adopted on 3 June 2003, ECOFIN's Conclusions accepted the Code of Conduct Group's report that Guernsey's proposals would 'rollback' the Island's listed regimes. The timescale for the introduction of the general zero rate regime in 2008 was also accepted, although it was an extension from the Code's deadline for rollback of 31 December 2005. ECOFIN's statement that the Island's intended measures were 'not harmful' represented a very significant endorsement of the Island's international standards. This declaration was also a reflection of the EU's recognition of the co-operative and constructive response by Guernsey to the EU Tax Package as a whole, including the EU Directive on Taxation of Savings Income.

EU Directive on Taxation of Savings Income

2.8 In the preamble of the Directive on Taxation of Savings Income it is stated that *"The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State"*. The Directive is essentially an attempt to prevent tax evasion by EU resident individuals by ensuring that the savings income, which is primarily the interest paid on bank deposits, of individual EU residents is taxed effectively. The Directive therefore does not extend to savings income paid to companies or with very limited exceptions to trusts. It also does not extend to payments to individuals resident outside the EU including EU nationals.

2.9 In order to avoid circumvention of the Directive, Member States identified six third countries with whom it would be necessary to seek agreements for 'equivalent' measures. These 'named' third countries are Andorra, Liechtenstein, Monaco, San Marino, Switzerland and the United States. At a very early stage in negotiations on the Directive the UK and the Netherlands also agreed to promote 'same' measures with their dependent or associated territories which were listed as 'the Channel Islands, Isle of Man, and the dependent or associated territories in the Caribbean'. The need for this 'level playing field' requirement was ultimately enshrined as Article 17 of the Directive which links implementation to agreements being in place with the named third countries and the relevant dependent and associated territories. The only exception is the United States which is judged by Member States to already have equivalent measures in place.

3. Position adopted by Guernsey in response to EU Directive on Taxation of Savings Income

3.1 In the 1999 Policy and Resource Planning Report, the Advisory and Finance Committee highlighted the potential implications for the Island of the EU Tax Package and noted that it was monitoring the situation carefully. In the 2000 Policy and Resource Planning Report, it was stated that while the UK Government had acknowledged that the EU Tax Package could not be binding on Guernsey, it was likely that the Island would be encouraged to accept the principles which underlay the Package. The 2000 Policy and Resource Planning Report included for the first time the basic principles by which the Island would in future approach international initiatives such as the OECD Harmful Tax Practices initiative and the EU Tax Package. These principles have essentially remained the same since 2000, and were most recently reaffirmed by the States as part of last year's Policy and Resource Plan which states:

- *'The States of Guernsey will ensure that local standards of regulation of the financial services sector and co-operation in law enforcement remain at the forefront of developing international standards.*

- *The Island will argue in international fora for a global level playing field in standards amongst reputable jurisdictions. International initiatives will continue to be monitored and, once agreed, international standards should be adopted in the best long-term interests of the Island's economy and reputation. The implementation of accepted standards in the area of taxation may be in the form of legislation, tax information exchange agreements and double tax agreements.*

- *Money laundering is recognised as a critical adjunct to underlying criminal and terrorist activities. It damages the reputation of individual financial institutions and can undermine trust in the integrity of any financial centre. The States of Guernsey will therefore continue to play a leading rôle in the fight against money laundering and will take all reasonable action to prevent money laundering within the Bailiwick.*

- *The regulatory and law enforcement agencies of the Bailiwick will continue to work closely together, share information and assist in criminal investigations in other jurisdictions to deny criminals and their illicit funds access to the global financial systems.*

- *The States of Guernsey will continue at all times to play their part in the fight against terrorism and terrorist activities. Law enforcement agencies and the Guernsey Financial Services Commission will devote the necessary resources to prevent the use and abuse of the financial services sector by fully co-operating with the international community in the tracing, freezing and confiscation of the assets of terrorists, their agents, sponsors and supporters.*

- *The States of Guernsey will preserve an appropriate balance between the legitimate right to confidentiality and the need to assist foreign law enforcement agencies to effectively fight serious crime including tax evasion and corruption. At all times this commitment will take fully into account privacy obligations arising out of Article 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention of Human Rights and similar obligations.'*

These essential principles were the basis on which the Advisory and Finance Committee approached the EU Directive on Taxation of Savings Income.

3.2 The 2002 Policy and Resource Planning Report noted significant developments in EU Member States' negotiations on the Draft Directive. It was stated that at the 13 December 2001 ECOFIN Council, Member States had agreed that a final text of the Directive could only be negotiated once Member States had assessed the assurances with regard to equivalent measures in the named third countries and same measures in the relevant dependent and associated territories.

3.3 The 2002 Policy and Planning report stated:

'The Committee has stressed to the UK Government that tax matters do not fall under Protocol 3 to the UK's Treaty of Accession and therefore any future Directive on Taxation of Savings Income cannot be binding on Guernsey. The UK Government accepts the Island's constitutional position. The Committee and the UK Government have now entered discussions with the aim of achieving a position that protects the interests of both Guernsey and the UK.

The Committee recognises the wish of EU Member States to limit as far as possible any circumvention of the Draft Directive on Taxation of Savings Income by their residents. Guernsey has already indicated that the Island is prepared to help the EU achieve this objective, while safeguarding our competitive position in the global financial market.

Discussions between the Committee and HM Government are proceeding on the basis that Guernsey will not implement any measures in advance of all EU Member States, or the named third countries or other dependent or associated territories.

Agreement on the Draft Directive is linked in the EU Tax Package to implementation of the Code of Conduct on Business Taxation on which the Code of Conduct Group is due to reach its final conclusions in July 2002. The Code (which is a non-legally binding initiative) does not apply to Guernsey, but the Committee has recognised its importance for Member States in the EU single market. Within the context of the Island's review of tax structures and fiscal policies, consideration is being given to the principles and objectives of the Code. The Committee will not propose any process of taxation and fiscal reform which is not in the long term economic interests of the Island.'

3.4 At the ECOFIN Council on 3 December 2002, there was a significant shift in approach to the Draft Directive on the Taxation of Savings Income by the then Danish Presidency. The Presidency effectively moved the Draft Directive from the automatic exchange approach agreed at the Feira European Council of June 2000, to a twin track co-existence model offering the option of either automatic exchange of information or a retention tax. This decision was driven by the failure to reach agreement amongst Member States to move to automatic exchange of information by

a set date and reflected the fact that in negotiations it had become clear that Switzerland would not be prepared to move to automatic exchange of information, but would consider imposing a retention tax on EU resident individuals' savings income rising to 35% as an 'equivalent' measure. In discussions with the UK following the 3 December 2002 ECOFIN Council, Guernsey immediately reserved the right to opt for either automatic exchange of information or a retention tax on the same terms as Member States and named third countries as an essential level playing field requirement.

3.5 On 21 January 2003, political agreement was finally reached on the EU Tax Package including the terms of the Draft Directive on Taxation of Savings Income. This political agreement confirmed that three Member States, Austria, Luxembourg and Belgium had the right to opt for a retention tax on EU resident individuals' savings income from the date of entry into force of the Directive. The retention tax was set at 15% for the first three years, rising to 20% for the subsequent three years and 35% until the end of the 'transitional' period. All the other Member States were committed to automatic exchange of information.

3.6 Austria, Luxembourg and Belgium also agreed to move to automatic exchange of information at the end of the transitional period. However, the Draft Directive stipulated that the transitional period would only come to an end once all the named third countries - Andorra, Liechtenstein, Monaco, San Marino, Switzerland and the United States - had committed to exchange of information by request as defined by the OECD Model Agreement on Exchange of Information on Tax Matters. There is therefore no fixed date on which the 'transitional' period will finish.

3.7 At the 7 March 2003 ECOFIN Council, it was agreed the start date for transposition of the Directive would be provisionally scheduled to be 1 January 2005, but this was dependent on a review by the end of June 2004 of the agreements in place with third countries and relevant dependent and associated territories.

3.8 As a result of Guernsey's insistence on a level playing field, the Draft Directive recognised that dependent and associated territories were entitled to also choose between either a retention tax or automatic exchange. Following the political agreement on the EU Tax Package, the Advisory and Finance Committee undertook a major consultation exercise with States Members and the financial services industry on the two options which were available. **It was stressed during the consultation that only a limited number of Guernsey deposits would be affected in either case since the Draft Directive only applied to EU resident individuals' savings income and it did not therefore apply to companies or most trusts or non-EU business.**

3.9 **The Committee concluded as a result of this consultation, that there was a clear preference for a retention tax amongst the overwhelming majority of both the financial services industry and States Members. The main reason for this preference was that the retention tax option gives each individual investor the right to choose between a retention tax or authorising disclosure of information to their home authority in which case the interest payments would continue to be paid gross without any deduction.** The ability to offer this choice was considered essential to Guernsey's competitive position, not least because it would be available in key competitor jurisdictions such as Luxembourg and Switzerland. On 4 April 2003, the Advisory and Finance Committee therefore announced that it would recommend to the States the retention tax option once the EU Tax Package as a whole had been adopted by Member States.

3.10 On 3 June 2003, ECOFIN formally adopted the EU Tax Package and, as previously highlighted, the ECOFIN Conclusions recognised that Guernsey's timetable for implementation of the corporate taxation strategy by 2008 and stated that the Island's intended measures were not harmful under the terms of the EU Code of Conduct on Business Taxation. In these circumstances, on 4 June the Committee reaffirmed its political commitment to recommend to the States bi-lateral agreements with Member States to impose a retention tax, which would only apply once there was a level playing field with Member States and named third countries and the relevant dependent and associated territories. **The Committee stated that it believed that the introduction of the retention tax at the same time as leading competitors such as Switzerland and Luxembourg would demonstrate the Island's willingness to respond constructively to the emergence of new international standards whilst still protecting its competitive position in a truly international marketplace.**

3.11 The Committee also welcomed the ECOFIN Council decision to call upon the EU Commission to enter into discussions with other important financial centres in order to reach agreement on the application of equivalent measures to the Directive on Taxation of Savings Income. The Island had already emphasised in meetings at political and official level the importance of reaching agreements with centres such as Hong Kong and Singapore if the Directive was to be genuinely effective.

3.12 On 10 June 2003, Jersey and the Isle of Man followed Guernsey and also declared that they would recommend to their respective legislatures the adoption of a retention tax.

4. Negotiations by the Crown Dependencies with EU Member States

4.1 Following the adoption of the EU Tax Package the Crown Dependencies agreed to work together towards a joint model for bi-lateral agreements with EU Member States. It was clear that such a common approach would be the most effective way to progress matters with EU Member States. In addition, the Islands' respective financial services industries also wanted consistency across the Crown Dependencies in terms of implementation of the retention tax.

4.2 As a result of this approach, a joint Guernsey/Isle of Man/Jersey Model Agreement was sent to the fifteen Member States and the then ten Accession countries in November 2003. Following discussions between Member States on the Model at the technical EU High Level Group on Direct Taxation (HLG), the Islands entered into direct dialogue with the Commission and the Irish Presidency in January and February 2004 with the aim of facilitating reaching an agreed text with the HLG.

4.3 Model Agreements drafted by the Crown Dependencies were finally agreed with the HLG at their meeting on the 12 March 2004. The ECOFIN Council on 9 March 2004 also welcomed the Model Agreements with the Crown Dependencies. There are two Models: one for Member States adopting automatic exchange of information (Appendix A), and one for Member States adopting a retention tax on EU resident individuals' savings income (Appendix B). In both cases, all the Crown Dependencies will be adopting a retention tax on EU resident individuals' savings income with the option for clients of voluntary exchange of information. If the States approves these Model Agreements, bi-lateral agreements can be concluded and signed with each of the now twenty-five Member States. Enabling primary legislation will need to be brought to the States by which the States by ordinance will legislate to implement the retention tax regime and to fulfill the Island's obligations under the terms of its bi-lateral agreements on tax and transparency. The legislation should enable the Treasury and Resources department to provide for purely technical matters to be dealt with by subordinate Departmental regulations.

4.4 The Policy Council would aim to sign the bi-lateral agreements in advance of the 30 June 2004 deadline for EU Member States to review the arrangements and agreements in place relating to the Directive with the named third countries and relevant dependent and associated territories. It should be noted that the signing of these agreements does not bring them automatically into force. It is only after the level playing field conditions set out in the Model Agreements have been met, that the enabling primary legislation will be considered by the States. The Policy Council therefore continues to monitor very closely EU negotiations with third countries and the other relevant dependent and associated territories. The UK Caribbean overseas territories have in the main used the Crown Dependencies' Model Agreement as the

basis for their own agreements with EU Member States which are close to completion. Anguilla, the Caymans and Montserrat have all opted for automatic exchange of information while the British Virgin Islands and Turks and Caicos have opted for a retention tax regime. The Dutch dependencies have reached agreement with the EU, Aruba has opted for automatic exchange, while the Netherlands Antilles have opted for a retention tax regime.

4.5 It is intended that the bi-lateral agreements will extend to Alderney, which is part of Guernsey for the purposes of tax administration. A proposition will be debated in the States of Alderney on 22 June seeking approval for the terms of the Model Agreements and authority for the Chief Minister to sign on behalf of Alderney as well as Guernsey.

5. Terms of the Model Agreements with EU Member States on the Taxation of Savings Income

5.1 As a result of Guernsey's discussions with the HLG, there is far greater understanding amongst Member States of the Island's international personality and autonomy in relation to domestic matters including taxation. The Preamble to the agreement makes it clear that the obligations contained within it are for the contracting parties 'only'. This statement underlines the international community's recognition of the Island's independent international personality. This acceptance of Guernsey's right to determine its own obligations and agreements has meant that the Model Agreements do not simply replicate the Directive on Taxation of Savings Income which could not directly apply to the Island.

5.2 Under the terms of the Model Agreements, where the client of a Guernsey paying agent is an individual resident in the EU, then that agent would deduct a certain percentage of retention tax on that individual's savings income and send it to the Administrator of Income Tax, so the savings income paid to the individual is net of the retention tax. However, each individual client will have the option not to pay the retention tax and instead have the relevant information about the savings income sent to his/her tax authority in the EU country of his/her residence. This is a reciprocal agreement and therefore equally where the client of a paying agent in Austria, Luxembourg or Belgium, is a Guernsey resident, then that paying agent should deduct a percentage of the interest on that individual's savings income. Where the paying agent is in any other Member State, and the client is a Guernsey resident, then the information on that individual's savings income should be automatically transferred to the Guernsey Income Tax office.

5.3 Where a retention tax is collected by Guernsey or the Member States of Austria, Luxembourg and Belgium, 25% of the revenue will be retained by the jurisdiction in which the paying agent is located, while the balance of 75% of the revenue will be transferred to the individual's resident jurisdiction.

5.4 The retention tax and the relevant information is to be collected by the paying agent, that is, for example, the bank or savings institution in the country paying the interest. The paying agent is therefore responsible for determining the identity and residence of the individual beneficial owner of the savings income payments. The information necessary to impose a retention tax should already be available in Guernsey because of existing 'Know Your Customer' requirements.

5.5 **The Model Agreements refer to a 'retention' tax in Guernsey and a 'withholding' tax in Member States. These terms should be read as having the same meaning. The Crown Dependencies use the term 'retention' in order to distinguish between a withholding tax which is generally seen as a domestic tax and a retention tax on EU resident individuals' savings income which is not a Guernsey tax but monies retained by deduction from income payments on account of a liability to tax that Guernsey is collecting on behalf of EU Member States.**

5.6 The Model Agreements deviate from the Directive in three very fundamental ways relating to suspension, termination and Undertakings for Collective Investments in Transferable Securities (UCITS) funds.

Suspension Clause

5.7 First, Article 17 in the Model Agreements contains the suspension clauses. **The Model Agreements state that implementation is dependent on equivalent measures being in place in Member States, the other relevant dependent and associated territories and five named third countries (Andorra, Liechtenstein, Monaco, San Marino and Switzerland). The earliest date for implementation of the bi-lateral Agreements is 1 January 2005. This start date will be reviewed by EU Member States by 30 June 2004, at which point Guernsey will also assess whether equivalent measures will be in place by the end of the year.** These provisions constitute Article 17(1) and 17(2) of the Model Agreements and to this extent reflect the provisions of Article 17 of the Directive. Bi-lateral agreements signed by the Chief Minister will not therefore come into effect until the level playing field condition has been satisfied, and the necessary enabling legislation and regulations have been approved by the States.

5.8 **Article 17(3) and 17(4) of the Model Agreements go further than the Directive in that the Island has the right to suspend any bi-lateral agreement after implementation should a Member State fail to apply the Directive or if a third country or a relevant dependent or associated territory should fail to apply equivalent measures.** This is a very important level playing field caveat and means that the Island cannot be put at a competitive disadvantage with EU Member States, the named third countries and other relevant dependent or associated territories at a future date. It is proposed that the States should authorise the Policy Council to exercise the suspension clause in the bi-lateral agreements where the stated conditions have been met.

Termination Clause

5.9 In addition, Article 16 of the Model Agreements contains Termination clauses. Again this is important for the level playing field and is a significant recognition of Guernsey's independent international personality. Member States accepted that Guernsey could not sign an agreement which implied that one Parliament could bind future Parliaments. It is proposed that the authority of the States will be required to terminate an international agreement.

UCITS Funds

5.10 Finally, the Model Agreements include acceptance by EU Member States that Guernsey has legislation relating to undertakings for collective investment that is deemed equivalent in its effect to the EC UCITS legislation referred to in the Directive. This recognition brings benefits including UCITS equivalent undertakings for collective investment not being considered to be a paying agent for the purpose of the Model Agreements.

6. Recommendations

6.1 Overall the discussions on the Model Agreements have led to a far greater understanding amongst EU Member States of the Island's constitutional position and autonomy in taxation matters. The process of demonstrating Guernsey's equivalence in terms of legislation relating to undertakings for collective investment has also highlighted the Island's high standards of regulation.

6.2 The Model Agreements include significant safeguards which will protect the Island's competitive position not only in terms of the implementation date of future bi-lateral agreements, but throughout the period of their operation. Article 17 of the Model Agreements, means that they will not be implemented unless and until there is a level playing field, it states:

"The application of this agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or the Agreement, and providing for the same dates of implementation."

6.3 The extensive consultation with industry demonstrated a clear preference for the retention tax option contained within the agreements. This option allows customers the choice to opt for imposition of the retention tax or to opt for voluntary exchange. This choice prevents Guernsey being placed at a competitive disadvantage against EU Member States and the named third countries, including Switzerland and the relevant dependent and associated territories.

6.4 The Policy Council believes that the Model Agreements represent the best possible outcome for Guernsey in the negotiations with EU Member States, and strongly recommends their acceptance by the States.

6.5 The Policy Council therefore asks the States to:

- Note the contents of this Policy Letter;
- Authorise the Chief Minister, or other Minister designated for this purpose by the Policy Council, to sign bi-lateral agreements with EU Member States in the form, or substantially the form, annexed to this Policy Letter;
- Authorise the Policy Council to exercise on behalf of the States all the rights contained in, or pursuant to, the bi-lateral agreements with EU Member States (including the right to suspend their application) but excluding the right to terminate any bi-lateral agreement which is a decision reserved to the States;
- Direct the preparation of such legislation as may be necessary or expedient to implement and give effect to bi-lateral agreements on taxation and transparency entered into with the authority of the States.

L C Morgan
Chief Minister

20 May 2004

APPENDIX A

'MODEL' AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN EACH OF (GUERNSEY, ISLE OF MAN, AND JERSEY) AND EACH INDIVIDUAL EU MEMBER STATE THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION

WHEREAS:

1. Article 17 of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from the 1st January 2005 provided that:

   "(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

   (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)".

2. The relationship of [the Island] with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol [the Island] is not within the EU fiscal territory.

3. [The Island] notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

4. The "withholding tax" referred to in the Directive will be referred to as the "retention tax" in [the Island's] domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as "withholding/retention tax" and shall have the same meaning.

5. [The Island] has agreed to apply a retention tax with effect from the 1st January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement have generally been met.

6. [The Island] has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive.

7. [The Island] has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

[The Island] and [the Member State] hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires,

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the automatic exchange of information by the competent authority of the [Member State] to the competent authority of [the Island] in the same manner as to the competent authority of a Member State;

(b) the application by [the Island], during the transitional period defined in Article 10 of the Directive, of a retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

(c) the automatic exchange of information by the competent authority of [the Island] to the competent authority of the [Member State] in accordance with Article 13 of the Directive.

(d) the transfer by the competent authority of [the Island] to the competent authority of the [Member State] of 75% of the revenue of the retention tax.

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term 'competent authority' when applied to the [contracting parties] means [ ].

Article 1 Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in [the Island] to beneficial owners within the meaning of Article 5 of this Agreement who are residents of [the Member State] shall, subject to Article 3 of this Agreement, be subject to a retention from the amount of interest payment during the transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement. The rate of retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 2 Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 8 of this Agreement, are made by a paying agent established in a [the Member State] to beneficial owners, as defined in Article 5 of this Agreement, who are residents of [the Island], or where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

and [the Member State] will comply with paragraph 2 of this Article.

(2) Within six months following the end of their tax year, the competent authority of [the Member State] shall communicate to the competent authority of [the Island], automatically, the information referred to in paragraph 1 (a) – (d) of this Article, for all interest payments made during that year.

Article 3 Exceptions to the Retention Tax Procedure

(1) [The Island] when levying a retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph (2) of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

(i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(ii) the name and address of the paying agent;

(iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of [the Island] in which the paying agent is established shall communicate the information referred to in Article 2(1) of this Agreement to the competent authority of [the Member State] as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 4 Basis of assessment for retention tax

(1) A paying agent established in [the Island] shall levy retention tax in accordance with Article 1 of this Agreement as follows:-

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

(e) where [the Island] exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of retention tax by [the Island] shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, [the Island] may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

Article 5 Definition of beneficial owner

(1) For the purposes of this Agreement, "beneficial owner" shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

(a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;

(b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment.

(c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 6 Identity and residence of beneficial owners

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before the 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of the 10th June, 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1st January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

Article 7 Definition of paying agent

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

(a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub-paragraph (a) of paragraph 2 of this Article are:

(a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 8 Definition of interest payment

(1) For the purposes of this Agreement "interest payment" shall mean:

(a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 7(2) of this Agreement, distributed by:

(i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or

(ii) an equivalent undertaking for collective investment established in [the Island];

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC; or

(ii) an equivalent undertaking for collective investment established in [the Island].

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1)(a) and (b) of this Article.

(2) As regard paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition

of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1st January, 2011 be 25%.

(8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 9 Retention Tax Revenue sharing

(1) [The Island] shall retain 25% of the retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) [The Island] levying retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to [the Member State] proportionate to the transfers carried out pursuant to paragraph (1) of this Article.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of [the Island].

(4) [The Island] levying retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 10 Elimination of double taxation

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by [the Island] of the retention tax to which this Agreement refers in accordance with the following provisions:

(i) if interest received by a beneficial owner has been subject to retention tax in [the Island], the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its

national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

Article 11 Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 14 of this Agreement, but until the 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before the 1st March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses; and

- where the paying agent is established in a contracting party applying retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

Article 12 Mutual agreement procedure

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

Article 13 Confidentiality

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 14 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive, [the Island] shall cease to apply the retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period [the Island] elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

Article 15 Entry into force

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1st January 2005.

Article 16 Termination

(1) This Agreement shall remain in force until terminated by either contracting party.

(2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

Article 17 Application and suspension of application

(1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.

(2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.

(3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.

(4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 11

For the purposes of Article 11, the following entities will be considered to be a "related entity acing as a public authority or whose role is recognised by an international treaty"':

A. entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece	Ïñãáíéóµüò Ôçëåðéêïéíùíéþí ÅëëÜäïò (National Telecommunications Organisation) ãáíéóµüò Óéäçñïäñüµùí ÅëëÜäïò (National Railways Organisation) .çµüóéá Åðé÷åßñçóç Çëåêôñéóµïý (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) **Municipalities**

B. international entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

C. entities in third countries:

Those entities that meet the following criteria:
1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of
gross-up clauses.

APPENDIX B

'MODEL' AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN EACH OF (GUERNSEY, ISLE OF MAN, AND JERSEY) AND EACH INDIVIDUAL EU MEMBER STATE THAT IS TO APPLY THE WITHHOLDING TAX IN THE TRANSITIONAL PERIOD

WHEREAS:

1. Article 17 of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from the 1st January 2005 provided that :

   "(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

   (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)".

2. The relationship of [the Island] with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol [the Island] is not within the EU fiscal territory.

3. [The Island] notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

4. The "withholding tax" referred to in the Directive will be referred to as the "retention tax" in [the Island's] domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as "withholding/retention tax" and shall have the same meaning.

5. [The Island] has agreed to apply a retention tax with effect from the 1st January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement have generally been met.

6. [The Island] has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive.

7. [The Island] has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

The [Island] and [Member State] hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires,

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding/ retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

(b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive;

(c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding/retention tax levied under this Agreement.

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term 'competent authority' when applied to the [contracting parties] means [ ].

Article 1 Withholding/Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in the jurisdiction of a contracting party to beneficial owners within the meaning of Article 5 of this Agreement who are residents of the other contracting party shall, subject to Article 3 of this Agreement, be subject to a withhold/retention from the amount of interest payment during the

transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement . The rate of withholding/retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 2 Reporting of Information by Paying Agents

Where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund.

Article 3 Exceptions to the Withholding/Retention Tax Procedure

(1) A contracting party when levying a withholding/retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the withholding/retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that withholding/retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph (2) of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

(a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of the contracting party in which the paying agent is established shall communicate the information referred to in Article 2 of this Agreement to the competent authority of the contracting party of the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 4 Basis of assessment for withholding/retention tax

(1) A paying agent established in a contracting party shall levy withholding/retention tax in accordance with Article 1 of this Agreement as follows:-

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;

(e) where a contracting party exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph 1 of this Article, the withholding/retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of withholding/retention tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, the contracting party levying withholding/retention tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding/retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

Article 5 Definition of beneficial owner

(1) For the purposes of this Agreement "beneficial owner" shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

(a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;

(b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment .

(c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) of this Article apply, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 6 Identity and residence of beneficial owners

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before the 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of the 10th June, 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1st January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official document shall be considered to be the country of residence.

Article 7 Definition of paying agent

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

(a) it is a legal person with the exception of those legal persons referred to in paragraph (5) of this Article; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are:

(a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 8 Definition of interest payment

(1) For the purposes of this Agreement "interest payment" shall mean:

(a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 7(2) of this Agreement, distributed by:

(i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or

(ii) an equivalent undertaking for collective investment established in [the Island];

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC; or

(ii) an equivalent undertaking for collective investment established in [the Island].

(iii) entities which qualify for the option under Article 7(3) of this Agreement;

(iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1) (a) and (b) of this Article.

(2) As regard paragraphs 1(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph 1(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1)(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1st January, 2011 be 25%.

(8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 9 Withholding/Retention Tax Revenue sharing

(1) A contracting party which applies withholding/retention tax shall retain 25% of the withholding/retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) A contracting party levying withholding/retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.

(4) A contracting party levying withholding/retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 10 Elimination of double taxation

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding/retention tax to which this Agreement refers in accordance with the following provisions:

(i) if interest received by a beneficial owner has been subject to withholding/retention tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the withholding/retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

Article 11 Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 14 of this Agreement, but until the 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before the 1st March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses; and

- where the paying agent as defined in Article 7 of this Agreement is established in a contracting party applying withholding/retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

Article 12 Mutual agreement procedure

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

Article 13 Confidentiality

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 14 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive, the contracting parties shall cease to apply the withholding/retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period either of the contracting parties elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

Article 15 Entry into force

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1st January 2005.

Article 16 Termination

(1) This Agreement shall remain in force until terminated by either contracting party.

(2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

Article 17 Application and suspension of application

(1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.

(2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.

(3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.

(4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 11

For the purposes of Article 11, the following entities will be considered to be a "related entity acing as a public authority or whose role is recognised by an international treaty"':

A. entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece	Ïñãáíéóµüò Ôçëåðéêïéíùíéþí ÅëëÜäïò (National Telecommunications Organisation) Ïñãáíéóµüò Óéäçñïäñüµùí ÅëëÜäïò (National Railways Organisation) .çµüóéá Åðé÷åßñçóç Çëåêôñéóµïý (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) Municipalities

B. international entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

C. entities in third countries:

Those entities that meet the following criteria:
1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of
gross-up clauses.

The States are asked to decide:-

Whether, after consideration of the Report dated 20th May, 2004, of the Policy Council, they are of the opinion:-

1. To note the contents of that Report.

2. To authorise the Chief Minister, or other Minister designated for that purpose by the Policy Council, to sign bi-lateral agreements with EU Member States in the form, or substantially the form, annexed to that Report.

3. To authorise the Policy Council to exercise on behalf of the States all the rights contained in, or pursuant to, the bi-lateral agreements with EU Member States (including the right to suspend their application) but excluding the right to terminate any bilateral agreement which is a decision reserved to the States.

4. To direct the preparation of such legislation as may be necessary or expedient to implement and give effect to bi-lateral agreements on taxation and transparency entered into with the authority of the States.

DE V. G. CAREY
Bailiff and Presiding Officer

The Royal Court House
Guernsey
The 3rd June, 2004

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 21ST DAY OF JUNE, 2004

The States resolved as follows concerning Billet d'État No. VIII
dated 3rd June, 2004

POLICY COUNCIL

BI-LATERAL AGREEMENTS WITH INDIVIDUAL EU MEMBER STATES ON THE TAXATION OF SAVINGS INCOME

After consideration of the Report dated 20th May, 2004, of the Policy Council:-

1. To note the contents of that Report.

2. To authorise the Chief Minister, or other Minister designated for that purpose by the Policy Council, to sign bi-lateral agreements with EU Member States in the form, or substantially the form, annexed to that Report.

3. To authorise the Policy Council to exercise on behalf of the States all the rights contained in, or pursuant to, the bi-lateral agreements with EU Member States (including the right to suspend their application) but excluding the right to terminate any bilateral agreement which is a decision reserved to the States.

4. To direct the preparation of such legislation as may be necessary or expedient to implement and give effect to bi-lateral agreements on taxation and transparency entered into with the authority of the States.

K. H. TOUGH
HER MAJESTY'S GREFFIER