

## The Competent Authority

S&C.2(L)

16 December 2011

Dear Sir/Madam

### Guernsey Tax Information Exchange Agreements – interpretation and practical matters

Following the entry into force of a number Guernsey's Tax Information Exchange Agreements ("TIEAs") and the practical experience gained as a result of receiving requests for the exchange of information, I am writing to all of our TIEA partners to clarify a small number of practical issues:

1. Until relatively recently, the TIEAs which Guernsey has concluded included, in the Article relating to the "Exchange of Information on Request", the following text (or similar text) "...The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty...".

Whereas in the Article relating to the "Possibility of Declining a Request" reference is made to "...where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty..." (my underlining).

It is, therefore, theoretically conceivable that a person may interpret the Article "Exchange of Information on Request" as requiring the requesting Party to use all its TIEAs with other jurisdictions before the requesting Party could exercise its rights under the TIEA with Guernsey.

For the avoidance of doubt, I wish to clarify that, in such TIEAs, I do not interpret the first reference in the TIEA in any wider context (such as the example above) than contained in the Article on the "Possibility of Declining a Request".

2. In the majority of the TIEAs which are currently in force, there is no specific provision dealing with the timescales in which requests for the exchange of information will be dealt with (the TIEAs referring to the requested Party using its "...best endeavours to forward the requested information to the requesting Party with the least possible delay...").

The timescales included in the OECD Model TIEA are, however, used as the basis for determining the timescales for dealing with all requests. Indeed, our internal guidelines are in fact more stringent than the OECD guidelines, as follows:

- We acknowledge receipt of the request as soon as possible, **but within 5 working days**.

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- Regardless as to whether there are any time limits included in the particular TIEA (or MOU), if the request is considered to be deficient or requires clarification a letter would be sent to the competent authority of the requesting Party **within 30 days of the date of receipt of the request**. This letter would:
    - Address the reason(s) why the request is considered to be deficient and/or list each of the matters which require clarification.
    - Explain what the issue is and, if appropriate, provide the requesting Party with a possible solution.
    - If legal advice has been sought, we would advise the requesting Party that we would provide a definitive response, at the earliest opportunity.
  - If, for whatever reason, it will not be possible to obtain and provide the requested information within 90 days of receipt of the “complete” request we would send a letter to the requesting Party explaining the position, including the reason(s) why it has not been possible to provide the requested information.
3. I am aware that a number of countries choose to send requests, and exchange information, by means of encrypted e-mail, using products such as PGP or Winzip.

Following discussions with my colleagues in the IT Security section I am now able to provide details of the extent to which I, and the staff within the Income Tax Office (“ITO”) who are delegated to deal with the practical aspects of TIEA requests, are able to deal with matters electronically:

- I am able to receive e-mails which have a TIEA request attached as an encrypted document, using Winzip. Such e-mails should be addressed to **eoil@gov.gg**. The subsequent password to unlock the encrypted document should be e-mailed separately to one of the officers in the ITO who is delegated to deal with the practical aspects of TIEA requests.
  - I am also able to receive encrypted e-mails using PGP encryption, as I understand that, when receiving such an e-mail, I will have the ability to register as a “reader” and following such registration I will be able to access the encrypted e-mail without the need of downloading the PGP software.
  - I can respond to TIEA requests (including providing scanned copies of the requested information) using e-mail. Such e-mails will be encrypted using our corporate encryption software, Egress Switch. It will be necessary for the recipient of such an e-mail to carry out a procedure to decrypt the e-mail, however, this can be done without the need for the recipient to download “reader” software (recognising the fact that other jurisdictions may have IT policies prohibiting the download of unauthorised software). I have enclosed a copy of the instructions relating to opening Egress Switch encrypted e-mails (**Appendix 1**).
4. In cases where it is necessary to clarify certain aspects of a request I will, of course, write to the requesting Party detailing the aspects which require clarification. Following advice from my legal advisers, it is requested that, when replying to such letters seeking clarification, the requesting Party replies by way of providing a revised request, incorporating the aspects which required clarification. This is to ensure that if an appeal is made against formal notices requiring the production of documents and information the entirety of the details of the request can be presented to the Court in a single document.

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5. During the calendar year 2008 Guernsey's Government approved changes to the Income Tax Law, regarding the information gathering powers used to meet Guernsey's obligations under a TIEA. The changes introduced a procedure whereby TIEA requests were to be subject to independent scrutiny, by a member of the Guernsey Tax Tribunal. This legislation did not, however, receive Royal Assent until the calendar year 2011 and the Government has, in the meantime, subsequently approved a further change to the Law repealing these provisions before they were able to take effect.

I am, therefore, able to confirm that the TIEA requests received to date have not been subject to independent scrutiny by a member of the Guernsey Tax Tribunal and there is now no provision in the Law for any future requests to be subject to such independent scrutiny.

6. Under our information gathering powers, I can direct that the third party (to whom a Notice requiring the production of documents has been served) must not disclose, or cause or permit to be disclosed, to any person, any information or matter that is likely to prejudice the enquiry to which the Notice relates or the performance of my statutory functions. If a third party fails to comply with a direction not to disclose, they are guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale (at the time of this letter this equates to £20,000).

Whilst it is not a requirement of the Income Tax Law, I have decided that where a request for information has been made under an international agreement with another territory, such as a TIEA, I will only make a direction that the third party is prevented from disclosing if:

- there is a similar “no tipping-off” provision in the domestic tax legislation of the other territory (and I will consider that there is a “no tipping-off” provision if the other territory is not required to name the person who is the subject of the request when making a similar request for information in their own jurisdiction), and
- that territory confirms that it would exercise that power if it received a request for information from Guernsey, in similar circumstances, and
- the other territory has specifically asked for the “no tipping-off” direction to be made, and
- the other territory has confirmed that disclosure would seriously prejudice the assessment or collection of tax in the other territory.

For the avoidance of doubt I would clarify that there is no provision within the Guernsey Income Tax Law requiring me to notify the person who is the subject of the TIEA request that I have received a request relating to them.

7. I enclose an up to date list of the Guernsey competent authority contact details and the contact details of the officers who are authorised to deal with the practical aspects of TIEA requests (**Appendix 2**). For the avoidance of doubt I should clarify that it is only myself, the Deputy Director (Compliance & International) and Deputy Director (Technical & Operations) which are the competent authorities for Guernsey. I would be grateful to receive the current contact details of your competent authorities.

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8. I enclose the latest version of the Guernsey TIEA request template (**Appendix 3**). I would invite all of our TIEA partners to adopt the use of this template when making a request to Guernsey as this template has been developed based on our practical experience of exchanging information. This form is also available to view and edit from our website, using the following link: <http://www.gov.gg/ccm/navigation/income-tax/tax-information-exchange-agreements---mutual-agreement-procedures---double-taxation-arrangements/tax-information-exchange-agreements/> and selecting the document titled "TIEA Request Template (this document may be used when making a request to Guernsey)".

I hope the above is of assistance in clarifying certain matters of interpretation of Guernsey's TIEAs and some of the practical aspects of exchanging information. I appreciate not all of the aspects may relate to your country's TIEA with Guernsey, therefore, please ignore such aspects.

Should you wish to discuss any of the above matters in further detail please do not hesitate to contact the Compliance & International Manager, Nigel Garland, on +44 (0)1481 705741 or alternatively his e-mail address is: [nigel.garland@tax.gov.gg](mailto:nigel.garland@tax.gov.gg).

Finally, I wish you and your colleagues the season's greetings and both my colleagues and I look forward to continuing to work with you and develop our relationship during 2012.

Yours faithfully



R GRAY  
Director

**Encs**

# egress™

## Switch Data Encryption - Quick Start Guide

Appendix 1

### How To Read & Reply To A Secure Email For Free

Exchanging confidential data doesn't need to be costly and difficult to use. As a Switch recipient you can not only access encrypted files quickly and easily, you can also reply securely completely free of charge.

#### Getting Started

1

Click on the link contained in the email.

Note: First time users will be prompted to create a Switch ID.



This email has been sent to you securely using Egress Switch



Click [here](#) to access this secure email.

This free service is provided by Egress Software and enables you to communicate securely.

Having problems accessing the email? [Click Here](#)

Confidentiality Notice: This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender.

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### How To Read & Reply To A Switch Email For Free

2

Create your Switch ID by selecting New User.

Note: This is a one-time process.

The screenshot shows the Egress Switch sign-in interface. At the top is the Egress Switch logo and the text 'secure data exchange'. Below this, it says 'Please enter your Switch ID (user@domain.com) and password to sign in now.' There are two input fields: 'Switch ID' and 'Password'. A checkbox labeled 'Remember my Switch ID' is below the password field. A 'Sign In' button is at the bottom right. On the right side of the page, there are links for 'New User?', 'Create a Switch account', 'Forgot Your Password?', 'Reset your Switch password.', 'What is Switch?', and 'Learn more about Switch.'

3

Enter your email address and select a password.

Note: If you have received a secure message, use this email address as your Switch ID.

#### Sign Up

1 Please enter your details below to create a new Egress Switch user account.

Email (Switch ID):\*

First name:\*

Last name:\*

Email me about essential product updates and services from Egress

2 Choose a strong password to protect your identity.

Password:\*

Confirm password:\*

Minimum 8 characters, with at least 1 UPPER case or number

### How To Read & Reply To A Switch Email For Free



## 4

Check your mail-box for an activation code.

Note: Don't forget to check your Spam folder.

### Almost Done

A new Egress Switch account with Switch ID **john.smith@mycompany.com** has been created but is not active yet. A message with an activation code was sent to your address.

To activate your Switch account please click on the link contained in the email, or copy the activation code into the box below.

Note: If you don't get the email within 3-5 minutes, please check your Spam folder.

Activation code \*

Submit Activation Code

## 5

Access your secure email by selecting Read your message now.

Note: Don't forget that you can reply securely free of charge!

### All Done

You can now access Switch secure messages using your new Switch account:

**john.smith@mycompany.com**

Thank you for signing up with Egress Switch

Read your message now

## Learn More About Egress Switch

Visit <http://www.egress.com/online-tutorials/> to view informative video tutorials on how to: -

- Access a secure package
- Manage your packages and control access to them in real-time
- Send large files securely
- Grant or decline access requests to secure packages
- And many more.....

## Activating Advanced Features

Egress Switch offers many more features which are not currently activated with free accounts. To activate the following features please visit us here:

<http://www.egress.com/contact-us-form/>

- Full email message body encryption
- Automatic email content inspection
- Customisable security policies
- Centralised auditing & user management
- Integration into existing FTP(S) / HTTP(S) / Cloud servers
- Hosted cloud storage
- Customisable email headers

## Technical Support

Should you encounter any problems with Egress Switch or have any technical questions please contact your Egress representative or contact the Egress support department at <http://www.egress.com/support>



# STATES OF GUERNSEY INCOME TAX

TREASURY AND RESOURCES DEPARTMENT

Appendix 2

## Income Tax

PO Box 37, 2 Cornet Street  
St Peter Port, Guernsey  
GY1 3AZ  
Tel +44 (0) 1481 724711  
Fax +44 (0) 1481 713911  
Email enquiries@tax.gov.gg  
**www.gov.gg**

### TAX INFORMATION EXCHANGE AGREEMENT ("TIEA")

Our Ref:

#### Guernsey Competent Authority

Your Ref:

**Rob Gray**  
**Director of Income Tax**  
States of Guernsey Income Tax Office  
PO Box 37  
2 Cornet Street  
St Peter Port  
GUERNSEY  
GY1 3AZ

Telephone: +44 (0) 1481 724711  
Direct Line: +44 (0) 1481 710495  
Facsimile: +44 (0) 1481 713911  
Email: rob.gray@tax.gov.gg

Signature \_\_\_\_\_

**R GRAY**

#### Guernsey Competent Authority

**Richard Green**  
**Deputy Director of Income Tax**  
**(Compliance & International)**  
States of Guernsey Income Tax Office  
PO Box 37  
2 Cornet Street  
St Peter Port  
GUERNSEY  
GY1 3AZ

Telephone: +44 (0) 1481 724711  
Direct Line: +44 (0) 1481 710495  
Facsimile: +44 (0) 1481 713911  
Email: richard.green@tax.gov.gg

Signature \_\_\_\_\_

**R J GREEN**

#### Guernsey Competent Authority

**Mrs Nicky Forshaw**  
**Deputy Director of Income Tax**  
**(Technical & Operations)**  
States of Guernsey Income Tax Office  
PO Box 37  
2 Cornet Street  
St Peter Port  
GUERNSEY  
GY1 3AZ

Telephone: +44 (0) 1481 724711  
Direct Line: +44 (0) 1481 710495  
Facsimile: +44 (0) 1481 713911  
Email: nicky.forshaw@tax.gov.gg

Signature \_\_\_\_\_

**MRS N FORSHAW**

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**Officer authorised to deal with practical matters of TIEA requests**

**Nigel Garland**  
**Compliance & International Manager**  
 States of Guernsey Income Tax Office  
 PO Box 37  
 2 Cornet Street  
 St Peter Port  
 GUERNSEY  
 GY1 3AZ

Telephone: +44 (0) 1481 724711  
 Direct Line: +44 (0) 1481 705741  
 Facsimile: +44 (0) 1481 713911  
 Email: [nigel.garland@tax.gov.gg](mailto:nigel.garland@tax.gov.gg)

**Lee Harris**  
**Senior Inspector – Compliance & Investigation**  
 States of Guernsey Income Tax Office  
 PO Box 37  
 2 Cornet Street  
 St Peter Port  
 GUERNSEY  
 GY1 3AZ

Telephone: +44 (0) 1481 724711  
 Direct Line: +44 (0) 1481 705703  
 Facsimile: +44 (0) 1481 713911  
 Email: [lee.harris@tax.gov.gg](mailto:lee.harris@tax.gov.gg)

**Adrian Hamon**  
**Compliance Analyst**  
 States of Guernsey Income Tax Office  
 PO Box 37  
 2 Cornet Street  
 St Peter Port  
 GUERNSEY  
 GY1 3AZ

Telephone: +44 (0) 1481 724711  
 Direct Line: +44 (0) 1481 705739  
 Facsimile: +44 (0) 1481 713911  
 Email: [adrian.hamon@tax.gov.gg](mailto:adrian.hamon@tax.gov.gg)

**Mrs Alexis Morgan**  
**Compliance Analyst**  
 States of Guernsey Income Tax Office  
 PO Box 37  
 2 Cornet Street  
 St Peter Port  
 GUERNSEY  
 GY1 3AZ

Telephone: +44 (0) 1481 724711  
 Direct Line: +44 (0) 1481 705784  
 Facsimile: +44 (0) 1481 713911  
 Email: [alexis.morgan@tax.gov.gg](mailto:alexis.morgan@tax.gov.gg)



Requesting Party reference: \_\_\_\_\_

**Tax Information Exchange Agreement (“TIEA”) Request**

Date this request is being sent to Guernsey: \_\_\_\_\_

**PART 1 – Information required to satisfy overall conformity with the TIEA**

1. This is a request for information under the Agreement between the Government of [enter the name of the requesting country] and the States of Guernsey for the Exchange of Information relating to Taxes.
2. This request for the exchange of information is (please place an “x” in the relevant box):
- being made by [enter the name of the competent authority], for the purposes of the above mentioned TIEA.
  - being made by and on behalf of [enter the name of the competent authority] acting by and through their delegate [enter the delegate’s name and address], for the purposes of the above mentioned TIEA.
3. The request relates to the (please place an “x” in the relevant box(es)):
- assessment, collection or enforcement of tax(es) in relation to the person(s) named below
  - investigation or prosecution of criminal tax matters in relation to the person(s) named below
  - [if any other type please specify here] in relation to the person(s) named below
- which is in accordance with Article [enter the relevant Article number relating to the type of the request] of the TIEA.
4. The request relates to [enter the tax(es) which are relevant to the request] which is in accordance with Article [enter the relevant Article number] of the TIEA.

**PART 2 - Information provided to support the request****[IMPORTANT**

**if there is more than one person involved in the request please provide the details for each person separately by copying and pasting section 5 to 11, as appropriate.]**

5. The identity of person(s) under examination or investigation and required information:

In the case of an individual:

<b>Name:</b>	
<b>Last known address:</b>	
<b>Date of Birth (if known):</b>	
<b>Other identifying details available (please specify)</b>	

In the case of a company:

<b>Name:</b>	
<b>Last known registered address:</b>	
<b>Date of registration/incorporation (if known):</b>	
<b>Place of incorporation (if known):</b>	

6. The period for which the information is requested:
- |       |             |
|-------|-------------|
| From: |             |
| To:   | (inclusive) |

7. Details of the information/documents required:  
[enter, in as much detail as possible, the information and/or the documents you are requesting]

8. The tax purpose for which the information is sought:

**[please provide a summary of the tax purpose for which the information is sought relating to this person, including:**

- 8.1. The nature of the activity being examined/investigated (with reference to section 3 above).
- 8.2. The type of taxes which are subject to the examination/investigation, including details of the relevant taxable period of each tax.
- 8.3. If the period(s) for which the information/documents are required (see section 6 above) relate to any period of time outside of the tax years detailed in 8.2, please explain the connection between such information and the tax years listed].

9. The reason(s) why the information requested is considered to be “foreseeably relevant” to tax administration and enforcement within your territory, with respect to the person identified in section 5:

**[summarise the relevant details of your examination/investigation which you consider indicate that the information/documents requested are foreseeably relevant to the examination/investigation]**

9.1. Have you provided the Guernsey competent authority with all of the background information which is relevant to the request? [if “No” provide details of the reason(s) why the omitted information has not been provided]

Yes	No
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10. The grounds for believing that the information requested is present in Guernsey or is in the possession of or obtainable by a person in Guernsey:

**[explain here the reasons, factors and evidence from which it has been determined that this information is in the possession of or obtainable by a person in Guernsey]**

11. Details of the person believed to be in possession of or able to obtain the information requested:

**IMPORTANT**

**If there is more than one person believed to be in possession of or able to obtain the information, please provide the details for each person separately by copying and pasting each of the sections directly below for each such person]**

<b>Name:</b>	
<b>Last known address:</b>	
<b>Capacity in which they hold the information (if known), e.g. if a Trustee provide details of the Trust; if a Company Officer, provide details of the Company:</b>	

12. Details of the format in which you prefer the information to be provided:

- copies of original documents (not authenticated/certified), or
- copies of original documents (authenticated/certified) – see also section 19.
- sworn depositions
- other


13. I confirm that the request conforms with our laws and administrative practices, and the information would be obtainable in similar circumstances, both for our own tax purposes and in response to a TIEA request from Guernsey's competent authority.
14. I confirm that all reasonable means have been pursued in our territory, except where this would give rise to disproportionate difficulty.
15. I confirm that assessment or collection of the tax(es), which is/are the subject of this request is not barred by any Statute of Limitations or similar restrictions in our territory.  <b>[If there is any reliance on "special circumstances" to extend the normal period of limitation, please describe and explain the special circumstances]</b>
16. I confirm that the information contained in this request is furnished under the provisions of and in conformity with the TIEA with Guernsey and that the use and disclosure of information which will be provided as a result of this request will be governed accordingly.

**PART 3 – Potentially excluded information required**

17. Do you believe that any of the information sought is, or may be, subject to:			
17.1 legal privilege? (delete as appropriate) [if "Yes", provide details]	<table border="1"> <tr> <td>Yes</td> <td>No</td> </tr> </table>	Yes	No
Yes	No		
17.2a trade, business, industrial or commercial or professional secret or trade process? (delete as appropriate) [if "Yes", provide details]	<table border="1"> <tr> <td>Yes</td> <td>No</td> </tr> </table>	Yes	No
Yes	No		
For the avoidance of doubt, if it is determined that any of the information sought is subject to legal privilege, a trade, business, industrial or commercial or professional secret it will not be possible to exchange that information.			

**PART 4 - Operational aspects of the request**

18. Is there any specific time limit within which you require the information requested to be provided (for example, to meet court deadlines, etc)? <b>[if "Yes", enter the date that the information is required by or the time limit associated with this request, together with the reason for the timescale]</b>	Yes	No
19. If in section 12 you requested "copies of original documents (authenticated/certified)" please clarify whether specific wording is required in the certificate. <b>[if "Yes", please either provide details of the specific text to be included in the certificate or provide a template of the certificate you would require to be completed]</b>	Yes	No
20. The Guernsey Income Tax Law includes a provision enabling the Guernsey competent authority to require a person, who is served with a Notice to provide information, not to advise third parties (an "anti-tipping off" provision) Do you wish the Guernsey competent authority to invoke the "anti-tipping off" provision in any formal Notice issued? <b>[if "Yes", please provide:</b>	Yes	No
20.1. The reason(s) why you believe that, without the "anti tipping off" requirement, your enquiry and / or the assessment or collection of tax may be <u>seriously</u> prejudiced.		
20.2. Confirmation that you would be able to impose a similar "anti-tipping off" prohibition in the event of a request being made to you by Guernsey in similar circumstances.]		

<p>21. Do you consider there to be a significant risk that the person(s) in possession of or able to obtain the information being requested would remove, tamper with, falsify or destroy the documents/information held if requested to provide them?</p>	Yes	No		
<p><b>[if “Yes”, please provide any information/evidence you have in support of this. Note: Your response will then form the basis of any application to the Royal Court/Bailiff, in Guernsey, for a Court Order/Search Warrant]</b></p>				
<p>22. The Guernsey Income Tax Law includes a provision where, in the event that an appeal is made;</p>				
<p>22.1. The court can order the documents to be lodged with the court, pending the outcome of the appeal or</p>				
<p>22.2. The court can order that the Notice requiring production of the documents be complied with, pending the outcome of the appeal.</p>				
<p>Do you require the Guernsey competent authority to make such an application to the court?</p>		<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Yes</td> <td style="width: 50%; text-align: center;">No</td> </tr> </table>	Yes	No
Yes	No			
<p><b>Note: It is anticipated that the court would only exercise these powers in cases where there is good reason to believe that the appeal has little merit, and may have been made primarily as a delaying tactic, or not to do so may result in the documents being destroyed, defaced, etc.</b></p>				
<p><b>[if “Yes”, please specify which of paragraphs 22.1 or 22.2 applies and provide the basis for your belief that this is so, including any relevant timescales that are being worked to (e.g. relevant court dates, etc). This will then form the basis of any representation to the Royal Court in the event that such an appeal is made]</b></p>				

**PART 5 - Miscellaneous**  
This part of template need only be completed if you wish to provide any further information, etc which you consider may be relevant to the request and which is not already covered in Parts 1 – 4.

Signed \_\_\_\_\_

\_\_\_\_\_

[Official Capacity]

Date \_\_\_\_\_

[dd/mm/yyyy]