



XIV  
2013

# BILLET D'ÉTAT

WEDNESDAY 26th JUNE 2013

TREASURY AND RESOURCES DEPARTMENT  
EU SAVINGS DIRECTIVE – BI-LATERAL  
AGREEMENT WITH CROATIA

# BILLET D'ÉTAT

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TO  
THE MEMBERS OF THE STATES  
OF THE ISLAND OF GUERNSEY

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I hereby give notice pursuant to Rule (1)(4) of the Rules of Procedure of the States of Deliberation that the item contained in this Billet d'État which has been submitted for debate will be considered at the Meeting of the States of Deliberation already convened for **WEDNESDAY, the 26<sup>th</sup> JUNE, 2013.**

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
7<sup>th</sup> June 2013

**TREASURY AND RESOURCES DEPARTMENT****EU SAVINGS TAX DIRECTIVE – BI-LATERAL AGREEMENT WITH CROATIA**

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

8<sup>th</sup> April 2013

Dear Sir

**1. Executive Summary**

This Report is recommending that a change should be made to the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, as amended, to enable adding, alongside the names of the current EU Member States, Croatia to Schedule 1 of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Ordinance, 2005 (“the 2005 Ordinance”) (which was, in turn, amended by the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) (Amendment) Ordinance, 2006 (“the 2006 Ordinance”), when the names of the, then new, EU Member States Bulgaria and Romania were added to the Schedule). This Report also recommends the approval of the signature of a bilateral Agreement with Croatia and the addition of that country to the list of EU Member States set out in Schedule 1 to the 2005 Ordinance.

**2. Report**

- 2.1. The EU Directive on the Taxation of Savings (“EU Savings Tax Directive”) aims to ensure that savings interest of EU resident individuals is taxed effectively.
- 2.2. Guernsey is not within the EU Fiscal Territory, but it has always indicated a willingness to participate in the development of genuine international standards in relation to transparency and exchange of information in tax matters.
- 2.3. As a consequence, and after wide ranging consultation with the finance industry, in June 2004 the States agreed to implement measures equivalent to those contained in the EU Savings Tax Directive. The measures adopted at that time by Guernsey were based on a Retention Tax on EU resident individuals’ savings income, whilst providing those investors with the choice to opt, as an alternative to the Retention Tax, for the disclosure of information to the tax authority in their home EU Member State. The States authorised the Chief Minister to sign bi-

lateral Agreements with all 25 Member States of the European Union, as was the case at that time.

2.4. In 2006, as indicated above, Bulgaria and Romania joined the EU and, as part of their accession, they were required to demonstrate that they were meeting their international obligations, including adopting the EU Savings Tax Directive. As a consequence, following consideration of the Policy Council's Report in Billet XIII of 2006, the States resolved to amend Schedule 1 of the 2005 Ordinance to enable Bulgaria and Romania to be added.

2.5. On 3 June 2004, the States resolved:

“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.”

The form of the Agreements annexed to that Report was premised on the presumption that they would relate to Retention Tax, with the option to exchange information as an alternative.

All of the 27 Agreements signed to date, and which are listed in Schedule 1 to the 2005 Ordinance, have been in this form.

2.6. In November 2010 (Billet XXII of 2010, page 1670) the States agreed that, with effect from 1 January 2011, a Paying Agent in Guernsey could choose, if it so wished, to cease deducting Retention Tax, but must do so no later than 30 June 2011.

2.7. Croatia is due to accede to membership of the EU on 1 July 2013. Contact has been made with Guernsey, therefore, by the EU, on behalf of Croatia, in order to set in motion similar arrangements to be made, in relation to Croatia, as exist in relation to all other EU Member States.

2.8. The Agreement with Croatia would be the first such Agreement that makes no reference to Retention Tax (Croatia's succession to the EU coming after Guernsey moved away from Retention Tax to full information exchange as the only option).

As a consequence, the proposed Agreement between Guernsey and Croatia would relate solely to exchange of information, with no reference to Retention Tax.

2.9. As the legislation to deal with such arrangements is based both on the existence of a Retention Tax and on the exchange of information, there may be some doubt as to whether it currently caters for the possibility of an Agreement being made which deals only with information exchange.

In addition, it is questionable whether any person is currently authorised by the States to sign an Agreement such as the one proposed between Guernsey and

Croatia (which makes no reference at all to Retention Tax), given that the States Resolution of 3 June 2004 authorised the Chief Minister, or another Minister Designate, to sign Agreements which were in substantially the same form as those that dealt with Retention Tax.

### **3. The proposal**

- 3.1. When Guernsey agreed to participate in the arrangements relating to the EU Savings Tax Directive, it was always accepted that there would be further expansion of the EU and, as a consequence, additional bi-lateral Agreements would need to be put in place.
- 3.2. To enable Guernsey to sign and enforce the provisions of an Agreement with Croatia in the form now proposed (following the abolition of Retention Tax in Guernsey), some minor modifications need to be made to the relevant legislation. In addition, once such an Agreement has been signed, Croatia needs to be added to the list of EU Member States which is scheduled to the 2005 Ordinance; and the Agreement with that country needs to be approved by Ordinance.
- 3.3. Finally, in order for the Agreement with Croatia to be signed, and to cater for any further future changes to the form of such Agreements, it is proposed that the States authorise the Chief Minister, or other Minister designated for that purpose by the Policy Council, to sign bi-lateral agreements with EU Member States which provide, wholly or in part, for the exchange of information in relation to tax matters for the purposes of the EU Savings Tax Directive, in place of the States Resolution of 3 June 2004.

### **4. Principles of Good Governance**

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance defined by the UK Independent Commission on Good Governance in Public Services (Billet IV of 2011).

### **5. Resource Implications**

The Competent Authority, for the purposes of arrangements made with EU Member States, is the Director of Income Tax. It is the Director who receives information from Paying Agents in Guernsey and transmits that information onto EU Member States. The proposed amendments to the legislation, and the signing of the Agreement between Guernsey and Croatia, would neither give rise to any loss of, or increase to, the revenues of the States, nor would it require any additional resources being made available to the Director.

### **6. Recommendations**

The Treasury and Resources Department recommends that the States:

- 6.1. agree that the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, as amended, be further revised, by Ordinance, as provided for in that Law, in order to allow the provisions of that Law to be applied to an Agreement between Guernsey and any EU Member State (including Croatia), notwithstanding that the said Agreement may relate only to exchange of information rather than to Retention Tax;
- 6.2. agree that the bilateral agreement with Croatia, once signed, be approved and that Croatia be added to the list of EU Member States in the 2005 Ordinance (and that further minor modifications be made to that Ordinance and the 2006 Ordinance to mirror the changes to the 2004 Law proposed above); and
- 6.3. authorise the Chief Minister, or other Minister designated by the Policy Council for that purpose, to sign bi-lateral agreements with EU Member States (including Croatia) which provide, wholly or in part, for the exchange of information in relation to tax matters.

Yours faithfully

G A St Pier  
Minister

J Kuttelwascher (Deputy Minister)  
G Collins  
R Perrot  
T Spruce

**(NB The Policy Council supports the Report.)**

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 8th April, 2013, of the Treasury and Resources Department, they are of the opinion:-

1. To agree that the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, as amended, be further revised, by Ordinance, as provided for in that Law, in order to allow the provisions of that Law to be applied to any agreement between Guernsey and any EU Member State (including Croatia), notwithstanding that the agreement may relate only to exchange of information rather than to retention tax.
2. To agree that the bi-lateral agreement with Croatia described in the Report, once signed, be approved and that Croatia be added to the list of EU Member States in Schedule 1 to the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Ordinance, 2005 (and that further minor modifications be made to that Ordinance and the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) (Amendment) Ordinance, 2006 to mirror the changes to the 2004 Law proposed above).
3. To authorise the Chief Minister, or other Minister designated by the Policy Council for that purpose, to sign bi-lateral agreements with EU Member States (including Croatia) which provide, wholly or in part, for the exchange of information in relation to tax matters.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

