

**AGREEMENT BETWEEN**

**THE STATES OF GUERNSEY**

**AND**

**THE REPUBLIC OF POLAND**

**FOR THE AVOIDANCE OF DOUBLE TAXATION WITH**

**RESPECT TO CERTAIN INCOME OF INDIVIDUALS**

**The** States of Guernsey and the Republic of Poland,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to certain income of individuals,

Have agreed as follows:

**Article 1**  
**Persons covered**

This Agreement shall apply to individuals who are residents of one or both of the Contracting Parties.

**Article 2**  
**Taxes covered**

1. The taxes which are the subject of this Agreement are:
  - a) in Guernsey, income tax;
  - b) in Poland, personal income tax.
  
2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

**Article 3**  
**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "a Contracting Party" means Guernsey or Poland, as the context requires; the term "Contracting Parties" means Guernsey and Poland;
  - b) the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
  - c) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its subsoil may be exercised;
  - d) the term "competent authority" means:
    - (i) in the case of Guernsey, the Director of Income Tax, or his delegate, and

- (ii) in the case of Poland, the Minister of Finance or his authorised representative;
- e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in the territory of a Contracting Party, except when the ship or aircraft is operated solely between places in the territory of the other Contracting Party;
- f) the term "national", in relation to a Contracting Party, means any individual possessing the nationality or citizenship of that Contracting Party;
- g) the term "person" includes an individual, a company and any other body of persons.

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

#### **Article 4 Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Contracting Party and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
- b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;

- c) if he has an habitual abode in both Contracting Parties or in neither of them, he shall be deemed to be a resident only of the Contracting Party of which he is a national;
- d) if he is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

### **Article 5** **Income from employment**

1. Subject to the provisions of Articles 6, 8 and 9, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Contracting Party unless the employment is exercised in the territory of the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting Party.

2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the territory of the other Contracting Party shall be taxable only in the first-mentioned Contracting Party if:

- a) the recipient is present in the territory of the other Contracting Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting Party; and
- c) the remuneration is not borne by a fixed place of business which the employer has in the territory of the other Contracting Party; and
- d) the employment does not consist, solely or mainly, of the hiring out of the employee's labour.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting Party in which the place of effective management of the enterprise is situated.

## **Article 6**

### **Directors' fees**

Fees and other similar payments derived by an individual who is a resident of a Contracting Party in his capacity as a member of the management board, the supervisory board, or of a similar body of a company which is a resident of the other Contracting Party shall be taxed only in the first-mentioned Contracting Party.

## **Article 7**

### **Artistes and sportsmen**

1. Notwithstanding the provisions of Article 5, income derived by an individual who is a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the territory of the other Contracting Party, may be taxed in that other Contracting Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Article 5, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

## **Article 8**

### **Pensions**

Subject to the provisions of paragraph 2 of Article 9, pensions and other similar remuneration (including lump sums) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment or self-employment and social security pensions may be taxed in the first-mentioned Contracting Party.

## **Article 9**

### **Government service**

1.
  - a) Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in the territory of that Contracting Party and the individual is a resident of

that Contracting Party who:

- (i) is a national of that Contracting Party; or
  - (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
- b) However, such pensions and similar remuneration shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Contracting Party.
3. The provisions of Articles 5, 6, 7 and 8 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or a local authority thereof.

## **Article 10 Students**

Payments which a student, pupil or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the territory of the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting Party, provided that such payments arise from sources outside the territory of that Contracting Party.

## **Article 11 Elimination of double taxation**

Double taxation shall be avoided as follows:

- a) Where a resident of a Contracting Party derives income which, in accordance with the provisions of this Agreement may be taxed in the other Contracting Party, the first mentioned Contracting Party shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting Party. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income derived from the other Contracting Party.

- b) Where in accordance with any provision of this Agreement, income derived by a resident of a Contracting Party is exempt from tax therein that Contracting Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## **Article 12** **Non – discrimination**

1. Nationals of a Contracting Party shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. Nothing contained in this Article shall be construed as obliging either Contracting Party to grant to individuals not resident in that Contracting Party any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals who are resident in that Contracting Party.

3. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 13** **Mutual agreement procedure**

1. Where an individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation

or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of applying this Agreement.

#### **Article 14** **Members of diplomatic missions** **and consular posts**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

#### **Article 15** **Entry into force**

1. This Agreement is subject to ratification, acceptance or approval in accordance with the law of each of the Contracting Parties. Each Contracting Party shall notify the other in writing of the completion of its necessary internal procedures for entry into force. This Agreement shall enter into force on the first day of the third month following the receipt of the later of these notifications.

2. Upon the date of entry into force this Agreement shall have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.:

3. Notwithstanding the provisions of paragraph 2, this Agreement shall only have effect when the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters shall have effect.

#### **Article 16** **Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiry of two years from the date of entry into force of this Agreement.

2. In such event, this Agreement shall cease to have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

3. Notwithstanding the provisions of paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto, have signed this Agreement.

**DONE** in duplicate at London this            day of            , 2013, in two originals in the English and Polish languages, both texts being equally authentic.

**FOR  
THE STATES OF GUERNSEY**

**FOR  
THE REPUBLIC OF POLAND**