

**AGREEMENT**

**BETWEEN**

**THE STATES OF GUERNSEY**

**AND**

**THE KINGDOM OF BELGIUM**

**FOR**

**THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

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AND  
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WHEREAS the States of Guernsey and the Kingdom of Belgium recognise that present legislation in Guernsey already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Kingdom of Belgium;

WHEREAS the States of Guernsey on 21 February 2002 entered into a political commitment to the OECD's principles of effective exchange of information;

WHEREAS the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, THEREFORE,

**THE STATES OF GUERNSEY,  
on the one hand,**

**and**

**THE KINGDOM OF BELGIUM,  
THE FLEMISH COMMUNITY,  
THE FRENCH COMMUNITY,  
THE GERMAN-SPEAKING COMMUNITY,  
THE FLEMISH REGION,  
THE WALLOON REGION,  
and THE BRUSSELS-CAPITAL REGION,  
on the other hand,**

HAVE AGREED to conclude the following Agreement, which contains obligations on the part of the Contracting Parties only.

## **Article 1**

### **Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

## **Article 2**

### **Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

## **Article 3**

### **Taxes Covered**

1. The taxes to which this Agreement shall apply are:
  - a) in the case of Guernsey,
    - (i) the income tax;
    - (ii) the dwellings profits tax;
  - b) in the case of Belgium,
    - (i) the individual income tax;
    - (ii) the corporate income tax;
    - (iii) the income tax on legal entities;
    - (iv) the income tax on non-residents;
    - (v) the value added tax;
    - (vi) the inheritance tax and transfer duty upon death;
    - (vii) the registration duties on donations.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect their obligations pursuant to this Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Guernsey” means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and the territorial sea adjacent thereto, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey, as it applies there and in the islands of Alderney and Herm;
  - b) the term “Belgium” means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
  - c) the term “Contracting Party” means Guernsey or Belgium as the context requires;
  - d) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the term “competent authority” means
    - i) in the case of Guernsey, the Director of Income Tax or his delegate;
    - ii) in the case of Belgium, as the case may be, the Minister of Finance of the Federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;
  - g) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

- h) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
  - i) the term “information” means any fact, statement, document or record in any form whatever;
  - j) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - k) the term “person” includes an individual, a company and any other body of persons;
  - l) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - m) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - n) the term “recognised stock exchange” means Euronext Brussels and the Channel Islands Stock Exchange, and any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - o) the term “requested Party” means the Contracting Party requested to provide information or assistance;
  - p) the term “requesting Party” means the Contracting Party requesting information or assistance from the requested Party;
  - q) the term “tax” means any tax to which the Agreement applies.
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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1, and in accordance with Article 2, of this Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and
    - i) in the case of collective investment funds or schemes, information on shares, units and other interests;
    - ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
    - iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
    - iv) in the case of persons that are neither collective investment funds or schemes, trusts or foundations, equivalent information to the information in sub-subparagraphs i) to iii).

Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
  - a) the identity of the person under examination or investigation;
  - b) the period of time for which the information is requested;
  - c) the nature of the information sought and the form in which the requesting Party wishes to receive it;
  - d) the tax purpose for which the information is sought;
  - e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;

- f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
  - g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
  - h) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. To ensure a prompt response:
- a) the competent authority of the requested Party shall confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
  - b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the competent authority of the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party, to the extent permitted under its domestic laws.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for the purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4, shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

## **Article 8**

### **Confidentiality**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.



4. Notwithstanding the provisions of paragraph 3, information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## **Article 9**

### **Costs**

Unless the competent authorities of the Contracting Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

## **Article 10**

### **Implementation Legislation**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

## **Article 11**

### **Language**

Requests for assistance and answers thereto shall be drawn up in English.

## **Article 12**

### **Other international agreements or arrangements**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

## **Article 13**

### **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

## **Article 14**

### **Entry into Force**

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications, and shall have effect:

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date, or, where there is no taxable period, all charges to tax arising on or after that date.

## **Article 15**

### **Termination**

1. Either Contracting Party may terminate this Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notice of termination by the other Contracting Party. All requests for information received up to the effective date of termination will be dealt with in accordance with the terms of the Agreement.

3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

**DONE** in duplicate at ....., on the ..... day of ..... 2014, and at ....., on the ..... day of ..... 2014, in the English language.

**FOR THE STATES OF GUERNSEY:**

**FOR THE KINGDOM OF BELGIUM:**

**FOR THE FLEMISH COMMUNITY:**

**FOR THE FRENCH COMMUNITY:**

**FOR THE GERMAN-SPEAKING  
COMMUNITY:**

**FOR THE FLEMISH REGION:**

**FOR THE WALLOON REGION:**

**FOR THE BRUSSELS-CAPITAL REGION:**