

**ARRANGEMENT BETWEEN THE STATES
OF GUERNSEY AND THE GOVERNMENT OF THE TURKS
AND CAICOS ISLANDS FOR THE EXCHANGE OF
INFORMATION RELATING TO TAXES**

Whereas the States of Guernsey and the Turks and Caicos Islands recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the 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 Parties are competent to negotiate, conclude perform and, subject to the terms of this Arrangement, terminate a Tax Information Exchange Arrangement with each other, under the terms of the entrustment from the United Kingdom of Great Britain and Northern Ireland;

Whereas Guernsey and the Turks and Caicos Islands, in February and April of 2002 respectively, entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently have participated actively in the Global Forum on Transparency and Exchange of Information;

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

Whereas the Parties wish to enter into an Arrangement that respects the constitutional relationship between the Parties

Now, therefore, the Parties have agreed to conclude the following Arrangement which contains obligations on the part of the Parties only:

ARTICLE 1

SCOPE OF ARRANGEMENT

The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes and the tax matters covered by this Arrangement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Arrangement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2

JURISDICTION

To enable the appropriate implementation of this Arrangement, information shall be provided in accordance with this Arrangement by the competent authority of the requested Party:

- (a) without regard to whether the person to whom the information relates is a resident, national or citizen of a Party, or whether the person by whom the information is held is a resident, national or citizen of a Party; and
- (b) provided that the information is present within the territory, or in the possession of or obtainable by a person subject to the jurisdiction, of the requested Party.

ARTICLE 3

TAXES COVERED

1. The taxes covered by this Arrangement are:
 - (a) in the case of Guernsey:
 - (i) income tax; and
 - (ii) dwellings profits tax, and
 - (b) in the case of the Turks and Caicos islands:
 - (i) VAT;
 - (ii) stamp duty;
 - (iii) hotel and restaurant tax;
 - (iv) passenger tax.
2. This Arrangement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Arrangement in addition to, or in place of, any of the taxes listed in sub-paragraph 1. The competent authorities of the Parties shall notify each other of any relevant changes to the taxation and related information gathering measures which may affect their obligations under this Arrangement.

ARTICLE 4

DEFINITIONS

1. In this Arrangement -
 - (a) “Turks and Caicos Islands” means the territory of the Turks and Caicos Islands and includes the territorial sea, areas within the maritime boundaries of the Turks and Caicos Islands and any area within which in accordance with international law the rights of the Turks and Caicos Islands with respect to its seabed and sub-soil of their natural resources may be exercised;
 - (b) “Guernsey” means the States of Guernsey and, when used in a geographical context, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, 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;
 - (c) “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 in which 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;
 - (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) “competent authority” means:
 - (i) in the case of Guernsey, the Director of Income Tax, or his delegate;
 - (ii) in the case of the Turks and Caicos Islands, the Permanent Secretary in the Ministry of Finance or a person or authority designated by him in writing;
 - (f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
 - (g) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;

- (h) “information” means any fact, statement, document or record in whatever form;
- (i) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Party to obtain and provide the information requested;
- (j) “national” means:
 - (i) in the case of Guernsey, any individual who has a place of abode in Guernsey and possesses British citizenship, and any legal person, partnership or association deriving its status as such from the laws of Guernsey and any organisation without legal personality treated for the purposes of Guernsey tax as a legal person created or organised under the laws of Guernsey;
 - (ii) in the case of Turks and Caicos Islands, any legal person, partnership, company, trust, estate, association or other entity deriving its status as such from the laws in force in Turks and Caicos Islands;
- (k) “Party” means Guernsey or the Turks and Caicos Islands as the context requires;
- (l) “person” means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (m) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (n) “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 and 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;
- (o) “recognised stock exchange” means the Channel Islands Securities Exchange and any other stock exchange agreed upon by the competent authorities of the Parties;
- (p) “requested Party” means the Party to this Arrangement which is requested to provide or has provided information or assistance in response to a request;
- (q) “requesting Party” means the Party to this Arrangement submitting a request for or having received information or assistance from the requested Party;
- (r) “tax” means any tax covered by this Arrangement.

2. As regards the application of this Arrangement at any time by a 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 a requested Party shall provide upon request in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request. 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 within its own territory, except where recourse to such income would give rise to disproportionate difficulty.

2. If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for the information, the requested 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 Party shall ensure that its competent authority, for the purposes of this Arrangement, has the authority, subject to Article 1, and within the constraints of Article 2, to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) (i) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain; and

- (ii) in the case of trusts, information on settlors, trustees, beneficiaries and protectors.

5. Notwithstanding the preceding paragraphs, this Arrangement does not create an obligation on the Parties to obtain or provide:

- (a) 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; or
- (b) information from a period falling outside of the legally required time period for retaining the information in the jurisdiction of the requested Party, but only where that information is in fact no longer kept.

6. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including, where possible, a description of the specific evidence sought and the form in which the requesting Party would prefer to receive it;
- (d) the tax purposes for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Party;
- (f) reasonable grounds for believing that the information requested is present in the territory of the requested Party or is in the possession of or obtainable by a person subject to 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 information requested;
- (h) a statement that the request is in conformity with this Arrangement and the laws and administrative practices of the requesting Party, and that if the requested information were 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.
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as promptly as possible to the competent authority of the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm the 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 any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the complete request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested Party refuses to provide the information, it shall immediately inform the competent authority of the requesting Party to explain the reasons for its inability to obtain and provide the information or the obstacles encountered or the reasons for its refusal.

ARTICLE 6

TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. With reasonable notice, the requested Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records with the prior written consent of the 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, in accordance with its domestic laws, allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the territory of the requested Party.

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 of 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 competent authority of the requested Party may decline to assist:

- (a) where the request is not made in conformity with this Arrangement;
 - (b) 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; or
 - (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party.
2. This Arrangement shall not impose upon a Party any obligation to provide information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
6. 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 Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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 proceedings.
2. 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.
3. Information provided to a requesting Party shall not be disclosed to any other jurisdiction.

ARTICLE 9

SAFEGUARDS

Nothing in this Arrangement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 10

ADMINISTRATIVE COSTS

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the Parties in accordance with a Memorandum of Understanding.

ARTICLE 11

NO PREJUDICIAL OR RESTRICTIVE MEASURES

1. Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or citizens of either Party so long as this Arrangement is in force and effective.
2. A "prejudicial or restrictive measure based on harmful tax practices" is a measure applied by one Party to residents, nationals or citizens of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2 the term "prejudicial or restrictive measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

ARTICLE 12

IMPLEMENTING LEGISLATION

The Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Arrangement.

ARTICLE 13

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Arrangement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Arrangement.
4. The Parties may also agree on other forms of dispute resolution.

ARTICLE 14

ENTRY INTO FORCE

1. Each of the Parties shall notify to the other, in writing, the completion of the procedures required by its law for the bringing into force of this Arrangement.
2. This Arrangement will enter into force on the date of the later of these notifications and shall thereupon have effect for all taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

ARTICLE 15

TERMINATION

1. This Arrangement shall remain in force until terminated by either Party.
2. Either Party may terminate this Arrangement by giving notice of termination in writing. 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 notice of termination by the other Party.
3. If the Arrangement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Arrangement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Arrangement.

