

**AGREEMENT
BETWEEN
THE STATES OF GUERNSEY
AND
THE KINGDOM OF SPAIN
ON EXCHANGE OF INFORMATION
ON TAX MATTERS**

WHEREAS the States of Guernsey and the Kingdom of Spain (“the Parties”) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of the 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 Spain;

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

NOW, therefore, the Parties have agreed to conclude the following Agreement:

Article 1

Object and Scope of the Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the 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, 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.

Article 2

Jurisdiction

To enable the object and scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement 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. This Agreement shall apply to the following taxes:
 - a) in the case of Spain:
 - (i) taxes of every kind and description, imposed by the national authorities, including among others:
 - the income tax on individuals (Impuesto sobre la Renta de las Personas Físicas);
 - the corporation tax (Impuesto sobre Sociedades);
 - the income tax on non-residents (Impuesto sobre la Renta de No Residentes);
 - the capital tax (Impuesto sobre el Patrimonio);
 - the inheritance and gift tax (Impuesto sobre Sucesiones y Donaciones);
 - the transfer tax (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados);
 - the value added tax (Impuesto sobre el Valor Añadido); and
 - the excise tax (Impuestos Especiales);
 - (ii) local taxes on income and on capital (impuestos locales sobre la renta y el patrimonio);
 - b) in the case of Guernsey:
 - (i) income tax;
 - (ii) dwellings profits tax.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain including inland waters, the air space, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the sea bed, its subsoil and superjacent waters, and their natural resources;
 - b) "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - c) "competent authority" means:
 - (i) in the case of Spain, the Minister of Finance and Public Administrations or his authorised representative;
 - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
 - d) "collective investment scheme" means any pooled investment vehicle, irrespective of its legal form; "public collective investment scheme" means any scheme or fund in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
 - e) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) "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;

- g) "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;
- h) "information" means any fact, statement, document or record in whatever form;
- i) "information gathering measures" means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the information requested;
- j) "notification" means the delivery of documents to residents of either one of the Parties in accordance with the rules of the Party which makes such delivery;
- k) "person" means a natural person, a company or any other body or group of persons;
- l) "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;
- m) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- n) "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- o) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party;
- p) "tax" means any tax covered by this Agreement;
- q) "administrative decisions" means decisions and any instruments which emanate from the administrative authorities concerning the application of taxes covered by this Agreement.

2. As regards the application of this Agreement 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 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 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 such conduct occurred in the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it has pursued all means available to obtain the information in its own territory, except where recourse to such means would give rise to disproportionate difficulty.
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, 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 it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and 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) information regarding the legal and beneficial ownership of companies, partnerships, foundations, and other persons and, within the constraints of Article 2, any other persons in an ownership chain, including:
 - (i) in the case of companies, information on any person, connected to the company including information on directors, secretaries, shareholders and other interests;
 - (ii) in the case of collective investment schemes, information on shares, units and other interests;
 - (iii) in the case of trusts, information on any person connected to the trust including information on settlors, trustees, protectors and beneficiaries; and

- (iv) in the case of foundations, information on any person connected to the foundation including information on founders, members of the foundation council and beneficiaries.

Notwithstanding the preceding subparagraphs, this Agreement creates an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information cannot be obtained without giving rise to disproportionate difficulties.

5. 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 of the information requested and the form in which the requesting Party would prefer 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 the tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph. "Foreseeably relevant" is intended to provide for exchange of information to the widest possible extent, within the terms of Article 1;
 - f) the grounds for believing that the information requested is present 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 information requested;
 - 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 those that would give rise to disproportionate difficulty.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party, and in accordance with the terms specified in the Protocol to this Agreement.

Article 6

Tax Examinations Abroad

1. 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.
2. If the request is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other 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 regarding the conduct of the tax examination shall be made by the 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 Agreement;
 - 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 public policy.
2. This Agreement shall not impose upon a requested Party an obligation to provide items subject to legal privilege, or to supply information 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. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. 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.

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 resident, national or citizen of the requested Party as compared with a resident, national or citizen of the requesting Party in the same circumstances.

Article 8

Confidentiality

1. Any information provided and received by the competent authorities of the Parties shall be treated as 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. Notwithstanding the foregoing, the information received by a Party may be used for other purposes only when such information may be used for such other purposes under the laws of that Party and the competent authority of the requested Party expressly authorises such use.
4. 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 Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party the competent authorities shall consult each other with regard to this Article. 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 extraordinary.

Article 10

Implementation Legislation

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

Article 11

Language

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

Article 12

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour 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 agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution should this become necessary.

Article 13

Mutual Assistance

1. If both competent authorities of the Parties consider it appropriate to do so, they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.
2. If both competent authorities of the Parties consider it appropriate to do so, they may agree procedures for the notification of administrative decisions made by the tax authorities of one Party, to persons within the territorial jurisdiction of the other Party, by the tax authorities of the second-mentioned Party.

Article 14

Entry into Force

1. The Parties shall notify each other through appropriate channels that the internal procedures required by each Party for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force after a period of three months following the date of receipt of the later of the notifications referred to in paragraph 1. Upon the date of entry into force, it shall have effect:
 - a) for criminal tax matters that could still be investigated on that date, immediately; 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.
3. Guernsey shall cease to be considered one of the territories referred to in paragraph 1 of the First Additional Provision of the Spanish Law to Avoid Tax Evasion (Disposición Adicional primera de la Ley 36/2006 de Medidas para la Prevención del Fraude Fiscal) of 29 November 2006 on the date on which this Agreement shall have effect.
4. The information exchanged under this Agreement is considered to be “effective exchange of information” in accordance with the internal legislation of the Parties, if applicable.

Article 15

Termination

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement, through appropriate channels, by giving written notice of termination at least six months before the end of any calendar year.
3. Termination shall be effective from the first day of January in the calendar year next following that in which notice of termination is given. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
4. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE in duplicate in London on the 10th day of November 2015, in the English and Spanish languages, both texts being equally authentic.

For the States of Guernsey

For the Kingdom of Spain

Jonathan P. Le Tocq
Chief Minister

José Manuel Gutiérrez Delgado
Counsellor (Finance)
Embassy of Spain in London

PROTOCOL

At the signing of the Agreement between the States of Guernsey and the Kingdom of Spain on exchange of information on tax matters, the undersigned have agreed upon the following provisions, which shall be an integral part of the Agreement.

For the purposes of paragraph 6 of Article 5:

To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the requesting Party no later than 5 working days after the receipt.
- b) Notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the confirmation of the receipt of the request.
- c) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of the confirmation of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, 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. The requesting Party shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the competent authorities of the Parties shall informally and directly, through Mutual Agreement or otherwise, discuss the possibilities to achieve the purpose of the request and consult with each other regarding the manner in which to achieve that objective.
- d) Endeavour to provide the information no later than 6 months following the date of the confirmation of the receipt of the request.

The time restrictions mentioned in this Protocol do not in any way impact on the validity and legality of information exchanged under the Agreement.

In the case of Guernsey being a requested Party, if the information is not provided within a period of six months, any consequent delay will not be taken into account in computing the applicable time-limits established by the Spanish Tax Legislation concerning tax proceedings.

For the States of Guernsey

For the Kingdom of Spain

Jonathan P. Le Tocq
Chief Minister

José Manuel Gutiérrez Delgado
Counsellor (Finance)
Embassy of Spain in London

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COMPETENT AUTHORITIES
OF GUERNSEY
AND
THE KINGDOM OF SPAIN**

On 10 November 2015, an Agreement on Exchange of Information Relating on Tax Matters (the “Agreement”) was entered into between the States of Guernsey and the Kingdom of Spain. In order to ensure the appropriate implementation of the Agreement, the competent authorities of Guernsey and Spain (the “Competent Authorities”) agree to the following:

The term “extraordinary costs” in Article 9 of the Agreement shall be interpreted as follows:

- (a) examples of “extraordinary costs” include, but are not limited to, the following:
 - (i) reasonable costs of reproducing and transporting an extraordinary amount of documents or records to the Competent Authority of the requesting Party;
 - (ii) reasonable fees imposed by a financial institution or other third party record keeper for copying records and research related to a specific request for information;
 - (iii) reasonable costs for stenographic reports of interviews, depositions or testimony;
 - (iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in Guernsey or in Spain for an interview, deposition or testimony relating to a particular information request; and
 - (v) reasonable legal fees for non-government counsel appointed or retained, with approval of the Competent Authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;

- (b) “extraordinary costs” do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

For the States of Guernsey

For the Kingdom of Spain

Jonathan P. Le Tocq
Chief Minister

José Manuel Gutiérrez Delgado
Counsellor (Finance)
Embassy of Spain in London

Date: 10 November 2015

Date: 10 November 2015