

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE STATES OF GUERNSEY
FOR
THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF
INDIVIDUALS
AND
TO ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER
PRICING ADJUSTMENTS**

(London, 7 October 2009)

Not yet in force

[2009] ATNIF 26

Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments

The Government of Australia and the States of Guernsey (“the Parties”),

Recognising that the Parties have concluded an Agreement for the Exchange of Information Relating to Tax Matters, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

1 The existing taxes to which this Agreement shall apply are:

(a) in the case of Australia, the income tax imposed under the federal law of Australia;

(hereinafter referred to as "Australian tax");

(b) in the case of Guernsey:

(i) income tax;

(ii) dwellings profits tax;

(hereinafter referred to as "Guernsey tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which 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 Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement..

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

ARTICLE 3

DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

(a) "Australia", when used in a geographical sense, excludes all external territories other than:

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory of Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

- (b) "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- (c) "competent authority" means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Guernsey, the Director of Income Tax or his delegate;
- (d) "person" includes an individual, a company and any other body of persons;
- (e) "tax" means Australian tax or Guernsey tax as the context requires; and

- (f) “transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic tax law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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, for the purposes of the taxes to which this Agreement applies, 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 4

RESIDENT

1 For the purposes of this Agreement, the term "resident of a Party" means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of Guernsey, a person who is a resident of Guernsey for the purposes of Guernsey tax.

2 A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which the individual's centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Parties, or in neither of them, the competent authorities of the Parties shall settle the question by mutual agreement;

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

ARTICLE 5

GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration paid by a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who:
 - (i) is a national or citizen of that Party; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration paid in respect of services rendered in connection with a business carried on by a Party or political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party.

ARTICLE 6

STUDENTS

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

ARTICLE 7

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

1. Where a resident of a Party considers the actions of the other Party result or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within three years of the first notification of the adjustment.
2. The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 8

EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement for the Exchange of Information Relating to Tax Matters concluded by the Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 9

ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of the last notification and shall, provided an Agreement for the Exchange of Information Relating to Tax Matters is in force between the Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after the first day of July in the calendar year next following the date on which this Agreement enters into force; and

- (b) in respect of Guernsey tax, for any year of charge beginning on or after the first day of January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 10

TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Parties may, after the expiration of 3 years from the date of its entry into force, give to the other Party written notice of termination.

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after the first day of July in the calendar year next following the date on which the notice of termination is given;
- (b) in respect of Guernsey tax, for any year of charge beginning on or after the first day of January in the calendar year next following the date on which the notice of termination is given.

3 Notwithstanding the provisions of paragraphs 1 and 2, this Agreement shall, upon receipt of written notice of termination of the Agreement for the Exchange of Information Relating to Tax Matters between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by their respective Parties, have signed this Agreement.

DONE at London, in duplicate, on this seventh day of October 2009.

FOR THE GOVERNMENT OF
AUSTRALIA:

John Cecil Dauth LVO
High Commissioner

FOR THE STATES OF
GUERNSEY:

Lyndon Trott
Chief Minister

