

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE STATES OF GUERNSEY
FOR
THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

(London, 7 October 2009)

Agreement between the Government of Australia and the States of Guernsey for the Exchange of Information relating to Tax Matters

Whereas the States of Guernsey and the Government of Australia ("the Parties") 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 States of Guernsey under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Government of Australia;

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

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

Article 1 Scope of the Agreement

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 covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons liable to such taxes, or to the investigation or the prosecution of tax matters in relation to such persons. A requested Party is not obliged 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. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that no deliberate actions are taken to unduly prevent or delay the effective exchange of information.

Article 2 Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Australia, taxes of every kind and description imposed under the federal law of Australia;

- (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. 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 Parties so agree. The competent authority of each Party shall notify the other within a reasonable period of time of any significant changes in their taxation laws which may affect matters covered by this Agreement.
- 3. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Party.

Article 3 Definitions

- 1. In this Agreement:
 - (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) "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;

- (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) "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;
- (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 gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (i) "information" means any fact, statement, document or record in whatever form;
- (j) "person" means a natural person, a company or any other body or group of persons;
- (k) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (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.

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 laws 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 4

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 it had occurred in the territory of the requested Party. 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, 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)
 - (i) information regarding the legal and beneficial ownership of companies, partnerships and other persons, and within the constraints of Article 1 any other persons in an ownership chain, including 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.

5. This Agreement does not create an obligation for a Party 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.
6. Any request for information shall be formulated with the greatest detail necessary 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 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 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 conforms with the laws and administrative practice 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 difficulty.
7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

Article 5

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 intended 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.
3. If the request referred to in paragraph 2 is granted, 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 person authorised 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 examination shall be made by the requested Party conducting the examination.

Article 6

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 ('ordre public').
2. This Agreement shall not impose upon a requested Party any obligation to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(4) shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.
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 citizen of the requested Party as compared with a citizen of the requesting Party in the same circumstances.

Article 7 Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Information provided to the competent authority of the requesting Party may not be used for any purpose other than for the purposes stated in Article 1 without the prior written consent of the requested Party.
3. 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.
4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8 Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including reasonable costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult as necessary 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 9 No Prejudicial or Restrictive Measures

1. Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of either Party so long as this Agreement is in force and effective.
2. For the purposes of this Article, a "prejudicial or restrictive measure based on harmful tax practices" means a measure applied by one Party to residents 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 10 **Mutual Agreement Procedures**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.
3. The Parties may agree on other forms of dispute resolution should this become necessary.

Article 11 **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 date of the last notification and shall thereupon 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 12 **Termination**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing through the appropriate channel. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party.

3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, 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