

AGREEMENT

BETWEEN

THE STATES OF GUERNSEY,

UNDER ENTRUSTMENT FROM THE GOVERNMENT

OF THE UNITED KINGDOM OF GREAT BRITAIN

AND NORTHERN IRELAND

AND

THE GOVERNMENT OF CANADA,

FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS

WHEREAS the Government of the United Kingdom has issued a letter of entrustment to the States of Guernsey to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada:

NOW, THEREFORE, THE STATES OF GUERNSEY and THE GOVERNMENT OF CANADA (“the Parties”) wishing to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, have agreed as follows:

ARTICLE 1

Object and Scope of this Agreement

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, including information that is foreseeably relevant to the determination, assessment, enforcement and collection of tax with respect to persons subject to such taxes, the investigation of tax matters 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 possession of nor 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 the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by or on behalf of the Parties:

- (a) in the case of Canada, all taxes on income and on capital imposed or administered by the Government of Canada;
- (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 this Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree in an exchange of letters. 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 3

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

- (a) “Canada”, used in a geographical sense, means:
 - (i) the land territory, air space, internal waters and territorial sea of Canada;

- (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
- (b) “Guernsey”, used in a geographical sense, 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 and the term “public collective investment fund or scheme” means any fund or scheme in which the purchase and sale, or the purchase and redemption, of shares or other interests 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 Canada, the Minister of National Revenue or the Minister’s authorised representative;
 - (ii) in the case of Guernsey, the Director of Income Tax or the Director’s delegate;
- (f) “information” means any fact, statement, document or record in whatever form;

- (g) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (h) “person” includes a natural person, a company, and any other body or group of persons;
- (i) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (j) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided that 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;
- (k) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (l) “requested Party” means the Party to this Agreement which is requested to provide information in response to a request;
- (m) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (n) “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 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 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 has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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 appropriate 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, for the purposes specified in Article 1, to obtain and provide, through its competent authority 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, foundations, and other persons, 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 and beneficiaries;

provided that 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.

5. Any request for information shall be formulated with the greatest detail possible in specifying 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 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) 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 laws 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; and
- (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.

6. 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.

2. This Agreement shall not impose on a requested Party any obligation to provide documents or records which are:
 - (a) in the case of Guernsey, subject to legal privilege, or, in the case of Canada, subject to solicitor-client privilege;

(b) subject to any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 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.

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

ARTICLE 7

Confidentiality

1. All information provided or 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. 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. 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, 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. 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 9

Implementation Legislation

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

ARTICLE 10

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 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 competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

ARTICLE 11

Entry into Force

This Agreement shall enter into force 30 days after the date of the later of the written notifications by the Parties of the completion of all formalities required for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), 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 a Party.
2. A Party may terminate this Agreement 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 the notice of termination. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.
3. If this 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, being duly authorised thereto by the respective Parties, have signed this Agreement.

DONE in duplicate at Guernsey, this 19th day of January 2011, in the English and French languages, each version being equally authentic.

**FOR THE STATES
OF GUERNSEY**

**FOR THE GOVERNMENT
OF CANADA**

PROTOCOL

At the time of signing of this Agreement between the States of Guernsey, under Entrustment from the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada, for the Exchange of Information on Tax Matters, the undersigned have agreed upon the following provisions which shall be an integral part of this Agreement.

It is understood that the term “person” for the purposes of this Agreement shall be interpreted in accordance with the Commentary to the OECD Model Agreement on Exchange of Information on Tax Matters;

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by the respective Parties, have signed this Protocol.

DONE in duplicate at Guernsey, this 19th day of January 2011, in the English and French languages, each version being equally authentic.

**FOR THE STATES
OF GUERNSEY**

**FOR THE GOVERNMENT
OF CANADA**