

AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND THE REPUBLIC OF POLAND
FOR
THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS

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

Whereas the Contracting 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 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 Republic of Poland;

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

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

Article 1

Object and Scope of the Agreement

The Contracting 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 Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of tax with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or prosecution of criminal tax matters in relation to such persons. 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. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

A requested Party is not obligated 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.

Article 3
Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:

- a) in the case of Poland:
 - i) the personal income tax;
 - ii) the corporate income tax;
 - iii) tax on goods and service;

- 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 Contracting Parties so agree. The competent authorities of each Contracting Party shall notify the other of any substantial changes in their laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

Article 4

Definitions

1. In this Agreement:

- a) "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
- b) "Guernsey" means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- c) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) "competent authority" means:
 - i) in the case of Poland, the Minister of Finance or his authorized representative;
 - ii) in the case of Guernsey, the Director of Income Tax or his delegate;
- e) "Contracting Party" means Poland or Guernsey, as the context requires;
- 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 and includes all cases where a person has been notified that proceedings concerning those matters have been initiated against that person;
- h) "information" means any fact, statement, document or record in any form whatever;

- i) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the information requested;
- j) “person” includes an individual, a company and any other body 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) “public collective investment fund or scheme” means any collective investment fund or scheme in which the purchase, sale or redemption of units, shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- m) “publicly traded company” means any company whose principal class of shares is listed on a recognized 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;
- n) “recognized stock exchange” means the Channel Islands Stock Exchange, Warsaw Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- o) “requested Party” means the Contracting Party which is requested to provide or has provided information or assistance in response to a request;
- p) “requesting Party” means the Contracting Party submitting a request for or having received information or assistance from the requested Party;
- q) “tax” means any tax to which the Agreement applies.

2. As regards the application of this Agreement at any time by a Contracting 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 Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the competent authority of 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 within 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 competent authority of 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 Contracting Party shall ensure that it has the authority, subject to the terms of Article 1, and within the limitations of Article 2, 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, foundations and other persons, including information on all such persons in an ownership chain;
 - ii) in the case of collective investment funds or schemes, information on shares, units and other interests;
 - iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries;

- iv) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries;

provided that this Agreement does not create an obligation on a Contracting 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 possible detail 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 requested information;
- 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;
- 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 difficulties.

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

shall:

- a) confirm receipt of the 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 within 90 days of receipt of the complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall 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.

Article 6

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 interview individuals and examine records, to the extent permitted under its domestic laws 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 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 allow 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.
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 authorized 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 requested Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist, where:

- a) the request is not made in conformity with this Agreement;
- b) 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) the disclosure of the information requested would be contrary to public policy (ordre public).

2. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

3. 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.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

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 8
Confidentiality

1. Any information provided and received by the competent authorities of the Contracting Parties shall be kept 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. The 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 Contracting 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 periodically 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 if the costs of providing information with respect to a specific request are expected to be significant.

Article 10

Language

Requests for assistance, the responses thereto and any other written communication between the competent authorities shall be drawn up in English. As regards other documents or files to be provided, the competent authorities shall consult on whether and to what extent translation into the English language is required.

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting 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 Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, and 9.
3. The Contracting Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.
4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of this Agreement will be in writing directly to the competent authority of the other Contracting Party at such address as may be notified by one Contracting Party to the other. Subsequent communications regarding requests for information may be either in writing or verbally, whichever is most practical, as agreed between the competent authorities.

Article 12
Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the law of each of the Contracting Parties. Each Contracting Party shall notify the other in writing of the completion of its necessary internal procedures for entry into force. This Agreement shall enter into force on the first day of the third month following the receipt of the later of these notifications.

2. Upon the date of entry into force, this Agreement shall 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 13
Termination

1. This Agreement shall remain in force for an unlimited period of time. It may be terminated by either Contracting Party serving a notice of termination, in writing, on the other Contracting Party. Such termination shall become effective on the first day of the third month following receipt of the notification by the other Contracting Party.
2. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the Agreement.

Done in duplicate at London this 6th day of December 2011, in the English and Polish languages, both texts being equally authentic.

For the States of Guernsey:

For the Republic of Poland: