

**AGREEMENT  
ON EXCHANGE OF INFORMATION  
ON TAX MATTERS  
BETWEEN  
THE STATES OF GUERNSEY  
AND  
THE REPUBLIC OF CHILE**

The States of Guernsey and the Republic of Chile, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

WHEREAS 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 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 Chile;

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;

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.

**Article 1  
Object and 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 taxes covered by this Agreement including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or 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 9. 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 prevented or delayed.

## **Article 2 Jurisdiction**

A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of, or in the control of or obtainable by, persons who are within its territorial jurisdiction.

## **Article 3 Taxes Covered**

1. The taxes which are the subject of this Agreement are:
  - a) in Chile: the taxes included in the *Ley sobre Impuesto a la Renta* (Income Tax Act), the *Ley sobre Impuesto a las Ventas y Servicios* (Value Added Tax Act) and the *Ley sobre Impuesto a las Herencias, Asignaciones y Donaciones* (Inheritances and Gifts Tax Act);
  - b) in Guernsey: Income Tax and Dwellings Profits Tax.
2. This Agreement shall also apply 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 imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authority of each Party shall notify the other of any substantial changes to its taxation and related information gathering measures which may affect the obligations of that Party pursuant to the Agreement.

## **Article 4 Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) “Chile” means the Republic of Chile and, when used in a geographical context, means the territory of the Republic of Chile, including the territorial sea in accordance with international law;
  - b) “Guernsey” means the States of Guernsey and, when used in a geographical context, 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:
  - i) in the case of Chile, the Minister of Finance, the Commissioner of the Revenue Service or their authorized representatives, and
  - ii) 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 which is liable to prosecution under the criminal laws of the requesting Party;
- 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 Party to obtain and provide the requested information;
- j) “Parties” means:
  - i) Chile, as the context requires, and
  - ii) Guernsey, as the context requires;
- k) “person” include an individual, a company and any other body of persons;
- l) “publicly traded company” means any company whose shares representing a majority of the voting rights and a majority of the value of the company are 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 which is requested to provide, or has provided, information in response to a request;
- o) “requesting Party” means the Party submitting a request for, or having received information from, the requested Party;
- p) “tax” means any tax to which the Agreement applies.

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 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct 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 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 and within the constraints 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. Provided that, in the case of Chile being the requested Party, if the information is covered by Article 1 of DFL N° 707 and Article 154 of DFL N° 3 of Chile, it shall be available with respect to bank transactions occurring on or after January 1, 2010;
- b) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;
- c) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries; and
- d) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Parties 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 possible and shall specify in writing the following information to demonstrate the foreseeable relevance of the requested information:

- 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 for the purposes referred to in Article 1;
- f) the grounds for believing that the information requested is present in the requested Party or is in the possession of, or is in the control 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 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 where that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. 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 and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- 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. Representatives of the competent authority of a Party may enter the territory of the other Party, to the extent permitted under that other Party's domestic laws and may, subject to previous agreement of the persons concerned, interview individuals and examine records. The competent authority of the first-mentioned Party shall give reasonable notice of the time and place of the meeting or examination to the competent authority of the other Party.
2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party that have entered the territory of the other Party in accordance with that other Party's domestic laws, to be present at the appropriate part of a tax examination in the second-mentioned Party always with the written consent of the persons subject to the examination.
3. If the request referred to in paragraph 2 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 about 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 first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.
4. For the purposes of this Article the term "domestic laws" refers to laws or instruments governing entry into, or exit from, the territories of the Parties.

## **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 (ordre public).
2. This Agreement shall not impose on a requested Party the obligation to provide items subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, 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 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 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 received by a Party under this Agreement shall be treated as confidential.
2. The information may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested Party.

### **Article 9 Costs**

1. Unless otherwise agreed by the competent authorities of the Parties, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred shall be borne by the requesting Party.
2. Extraordinary costs will not be incurred without the prior consent of the requesting Party.

### **Article 10 Implementation Legislation**

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

**Article 11**  
**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the 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 5 and 6.
3. The Parties may also agree on other forms of dispute resolution should this become necessary.

**Article 12**  
**Mutual Assistance Procedure**

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, jointly study non-compliance areas and explore other forms of exchange of information and co-operation

**Article 13**  
**No Prejudicial or Restrictive Measures**

Guernsey shall be excluded from the list established by decreto supremo N°628, Ministerio de Hacienda, dated 24 July 2003, according to the provisions of Article 41 D of Chile's Income Tax Act. The removal of Guernsey from the aforesaid list shall have effect as of the date that this Agreement comes into force.

**Article 14**  
**Entry into Force**

1. The Parties shall notify each other in writing that their procedures required by law for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force on the date of receipt of the later of the notifications referred to in paragraph 1.
3. Upon entry into force the provisions of this Agreement shall have effect on that date, but only in respect of any taxable periods beginning on or after that date or, where there are no taxable periods, all charges to tax arising on or after that date.

**Article 15  
Termination**

1. This Agreement shall remain in force indefinitely but either Party may, on or before the thirtieth day of June in any calendar year, give to the other Party a notice of termination in writing through appropriate channels.
2. The provisions of this Agreement shall cease to have effect on or after the first day of January in the calendar year next following that in which such 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.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.

DONE at St Peter Port, Guernsey this 4<sup>th</sup> day of April 2012, and in Santiago, Chile, this 24<sup>th</sup> of September 2012, in duplicate, in the English and Spanish languages, both texts being equally authentic.

**FOR THE STATES  
OF GUERNSEY**

**FOR THE REPUBLIC  
OF CHILE**