

AGREEMENT BETWEEN
THE STATES OF GUERNSEY AND
THE GOVERNMENT OF HUNGARY
ON EXCHANGE OF INFORMATION ON 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 the Contracting Parties wish to establish the terms and conditions governing the exchange of information relating to all tax matters;

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 Hungary;

The Contracting Parties have agreed as follows:

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 such taxes, the recovery and enforcement of tax claims, or to 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 8. 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
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. The taxes which are the subject of this Agreement are:

- a) in Hungary:
 - (i) the personal income tax;
 - (ii) the corporate tax;
 - (iii) the land parcel tax;
 - (iv) the building tax;
 - (v) the value added tax;

- b) in 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 to their taxation and related information gathering measures which may affect the obligations of that Contracting Party under this Agreement.

Article 4 Definitions

1. For the purposes of this Agreement:

- a) the term “Hungary” means the territory of Hungary as defined by its laws in accordance with international law;

- b) the term “Guernsey” means the States of Guernsey and, when used in a geographical sense, it means the islands of Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;

- c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

- d) the term “competent authority” means:
 - (i) in the case of Hungary, the minister responsible for tax policy or his authorised representative;

 - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;

- e) “a Contracting Party” and “the other Contracting Party” mean Guernsey or Hungary, as the context requires;
- f) the term “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) the term “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) the term “information” means any fact, statement, document or record in any form whatever;
- i) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- j) the term “person” includes an individual, a company and any other body of persons;
- k) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- l) the term “public collective investment fund or scheme” means any collective investment fund or scheme (that is a pooled investment vehicle, irrespective of legal form) 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;

- m) the term “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;
- n) the term “recognised stock exchange” means:
 - (i) on the part of Hungary, exchanges which are recognised as such by the competent supervisory authorities and which meet the following conditions:
 - a. they function regularly;
 - b. they have rules, issued or approved by the appropriate supervisory authorities of the home country of the exchange, defining the conditions for the operation of the exchange, the conditions of access to

the exchange as well as the conditions that shall be satisfied by a contract before it can effectively be dealt on the exchange; and

- c. they have a clearing mechanism whereby futures contracts are subject to daily margin requirements which, in the opinion of the competent supervisory authorities, provide appropriate protection;
- (ii) on the part of Guernsey, the Channel Islands Stock Exchange and any other stock exchange recognised by Hungary;
- o) the term “requested Party” means the Contracting Party which is requested to provide, or has provided, information or assistance in response to a request;
- p) the term “requesting Party” means the Contracting Party submitting a request for or having received information or assistance from the requested Party;
- q) the term “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 laws 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 requesting Party information for the purposes referred to in Article 1. Such information shall be provided 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 in 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 at its own discretion all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, 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 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 to obtain and provide, through its competent authorities, in accordance with the terms of this Agreement, and upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees and trustees;
- b)
 - (i) information regarding the 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, and information on all such persons in an ownership chain;
 - (ii) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries; and
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

This Agreement does not create an obligation on a requested 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 and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the nature of the information sought and the form in which the requesting Party would like to receive it;
- c) the period for which the information is requested;
- 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 held 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;

- 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 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 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. 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 be present at the appropriate part of a tax examination in the requested Party, to the extent permitted under its domestic laws.
2. If the request referred to in paragraph 1 is acceded to, 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 official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to 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:
 - 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;
 - c) where the disclosure of the information requested would be contrary to public policy, including interests of national security or public safety, of the requested Party; or

- d) the fulfilment of the request would harm the fundamental rights of the person concerned.
2. This Agreement shall not impose upon a requested Party any obligation:
 - a) 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; or
 - b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5.
 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 citizen of the requested Party as compared with a citizen of the requesting Party in the same circumstances.

Article 8 Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties under this Agreement shall be kept confidential.
2. Such information may 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. 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.
5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

Article 9
Language

Requests for assistance and responses thereto shall be drawn up in the English language.

Article 10
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 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 extraordinary.

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting 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 Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties shall agree on procedures for dispute resolution should this become necessary.

Article 12
Mutual Assistance Procedure

If both competent authorities of the Contracting 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, and jointly study non-compliance areas.

Article 13
Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of completion of the procedures required by its law for the bringing into force of this Agreement.

2. This Agreement shall enter into force on the 30th day following the receipt of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in both Contracting Parties:

- 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 14 Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.

2. The Agreement shall cease to have effect on the last day of a period of six months next following the date of receipt of notice of termination described in paragraph 1.

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 authorized thereto, have signed this Agreement.

Done in duplicate at London this 11th day of September 2013, in the English and Hungarian languages, both texts being equally authentic.

For the States of Guernsey

For the Government of Hungary

PROTOCOL
TO THE
AGREEMENT BETWEEN
THE STATES OF GUERNSEY AND
THE GOVERNMENT OF HUNGARY
ON EXCHANGE OF INFORMATION ON TAX MATTERS

signed on 11th September 2013

The States of Guernsey and the Government of Hungary have, in addition to the Agreement on Exchange of Information on Tax Matters signed on 11th September 2013 at London (“the Agreement”), agreed on the following provisions, which shall form an integral part of the said Agreement:

1. With reference to paragraph 2, subparagraph a) of Article 7 of the Agreement, “legal privilege” shall include information relating to communications between advocates, attorneys, solicitors, or other admitted legal representatives, as well as their employees, in their role as such and their clients, or every fact and data about which they gain knowledge in the course of carrying out their professional duties to the extent that the communications and knowledge are protected from disclosure under the laws of the relevant Contracting Party.

2. With reference to Article 10 of the Agreement, extraordinary costs include, but are not limited to, the following:

- (i) reasonable costs of engaging experts, interpreters and translators;
- (ii) reasonable fees charged by third parties for copying documents;
- (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;
- (iv) reasonable costs of conveying documents to the competent authority of the requesting Party;
- (v) reasonable costs of reproducing an extraordinary amount of documents;
- (vi) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in Guernsey or Hungary for an interview, deposition or testimony relating to a particular information request; and
- (vii) reasonable legal fees for non-government counsel appointed or retained, with approval of the competent authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information.

3. The present Agreement shall not prejudice the obligations deriving from Hungary's membership in the European Union.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at London this 11th day of September 2013, in the English and Hungarian languages, both texts being equally authentic.

For the States of Guernsey

For the Government of Hungary