



Double Tax Agreements (Guernsey) Amendment Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 24th day of February 2020

Present:

Her Excellency the Governor-General in Council

This order is made under section BH 1 of the Income Tax Act 2007 on the advice and with the consent of the Executive Council.

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal order	2
4	Clause 3 amended (Commencement of agreement)	2
5	Clause 4 amended (Purposes)	2
6	Clause 5 replaced (Arrangements to have effect)	2
5	Arrangements to have effect	2
7	New Schedule 2 inserted	2
	Schedule	3
	New Schedule 2 inserted	

Order

1 Title

This order is the Double Tax Agreements (Guernsey) Amendment Order 2020.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Principal order

This order amends the Double Tax Agreements (Guernsey) Order 2010 (the **principal order**).

4 Clause 3 amended (Commencement of agreement)

- (1) In the heading to clause 3, after “**agreement**”, insert “**and protocol**”.
- (2) In clause 3, replace “the Schedule” with “Schedule 1”.
- (3) In clause 3, insert as subclause (2):
- (2) The protocol set out in Schedule 2—
 - (a) comes into force on the date referred to in Article 4 of the protocol as the date on which the protocol enters into force; and
 - (b) amends the agreement set out in Schedule 1.

5 Clause 4 amended (Purposes)

In clause 4, replace “the agreement set out in the Schedule” with “the agreement and protocol set out in Schedules 1 and 2”.

6 Clause 5 replaced (Arrangements to have effect)

Replace clause 5 with:

5 Arrangements to have effect

The arrangements specified in the agreement and protocol set out in Schedules 1 and 2 have effect according to the agreement and the protocol.

7 New Schedule 2 inserted

After the Schedule, insert as Schedule 2 the schedule set out in the Schedule of this order.

Schedule
New Schedule 2 inserted

cl 7

Schedule 2
Protocol amending the agreement between the Government of
New Zealand and the States of Guernsey for the exchange of
information with respect to taxes and the allocation of taxing rights
with respect to certain income of individuals done at London on
21 July, 2009

cl 3(2)

The Government of New Zealand and the States of Guernsey (“the Parties”), desiring to amend the Agreement between the Government of New Zealand and the States of Guernsey for the Exchange of Information with Respect to Taxes and the Allocation of Taxing Rights with Respect to Certain Income of Individuals, done at London on 21 July, 2009 (“the 2009 Agreement”),

Have agreed as follows:

Article 1

The following shall be inserted immediately after the existing fifth recital of the Preamble to the 2009 Agreement:

“Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions);”.

Article 2

In Article 11 (Mutual Agreement Procedure) of the 2009 Agreement:

1. The first paragraph shall be deleted and replaced by the following;
- “1. Where difficulties or doubts arise between the Parties regarding the implementation, application or interpretation of this Agreement, including the application of the arm’s length principle under Chapter III, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.”.
2. The fourth paragraph shall be deleted and replaced by the following;
- “4. Where a person considers that the actions of one or both of the Parties result or will result for that person in taxation not in accordance with the provisions of Chapter III of this Agreement, or will result in a transfer pricing adjustment not

in accordance with the arm's length principle, that person may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of either Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.”.

3. The fifth paragraph shall be deleted and replaced by the following;
- “5. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with Chapter III of this Agreement or the arm's length principle. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.”.

Article 3

The following shall be inserted immediately after Article 11 (Mutual Agreement Procedure) of the 2009 Agreement:

“Article 11A Entitlement to benefits

1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which a request has been made under this paragraph will consult with the competent authority of the other Party before rejecting the request.”.

Article 4

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

Protocol. This Protocol shall enter into force on the date of the last notification and shall have effect from that date.

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

DONE at London, on the Sixteenth day of September 2019, in the English language.

**For the Government of
New Zealand**

For the States of Guernsey

David Evans
New Zealand Deputy High
Commissioner to the United Kingdom

Deputy Jonathan Le Tocq
Member, Policy & Resources
Committee

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, amends the Double Tax Agreements (Guernsey) Order 2010 (the **principal order**). The principal order gives effect to an agreement between the Government of New Zealand and the States of Guernsey for the exchange of information with respect to taxes and the allocation of taxing rights with respect to certain income of individuals (the **agreement**).

This order gives effect to a protocol that amends the agreement. This order inserts the protocol as *new Schedule 2* of the principal order. The protocol will come into force in accordance with *Article 4* of the protocol.

The parties will notify each other of the completion of their respective domestic procedures for the entry into force of the protocol. The date on which the protocol comes into force will be publicised on <http://taxpolicy.ird.govt.nz/tax-treaties>

A copy of the national interest analysis can be found at https://www.parliament.nz/resource/en-NZ/SCR_93186/c693f78d08af34976909b6139ac8d1eafe936572

**Double Tax Agreements (Guernsey) Amendment Order
2020**

2020/21

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This order is administered by the Inland Revenue Department.

Wellington, New Zealand:

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