



Double Tax Agreements (Guernsey) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 8th day of June 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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**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**

Order**1 Title**

This order is the Double Tax Agreements (Guernsey) Order 2010.

2 Commencement

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

3 Commencement of agreement

The agreement set out in the Schedule comes into force on the date referred to in Article 13 of the agreement as the date on which the agreement enters into force.

4 Purposes

The arrangements specified in the agreement set out in the Schedule have been negotiated with Guernsey for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.

5 Arrangements to have effect

The arrangements specified in the agreement set out in the Schedule have effect according to the agreement.

Schedule

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**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**

Whereas the Government of New Zealand and the States of Guernsey (“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 its Entrustment from the United Kingdom to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of New Zealand;

Whereas the States of Guernsey on 21 February 2002 entered into a political commitment to the Organisation for Economic Co-operation and Development’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 which contains obligations on the part of the Parties only:

Chapter I**Taxes covered and definitions***Article 1—Taxes covered*

1. Subject to paragraph 2, the taxes to which this Agreement shall apply are:
 - (a) in the case of New Zealand, income tax and goods and services tax (“New Zealand tax”);
 - (b) in the case of Guernsey, income tax and dwellings profits tax (“Guernsey tax”).

Chapter I—*continued*Article 1—*continued*

2. Notwithstanding paragraph 1, the only taxes to which Articles 9 and 10 shall apply are:
 - (a) in the case of New Zealand, income tax;
 - (b) in the case of Guernsey, income tax.
3. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the taxes listed in paragraph 1 if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws or measures which may affect the obligations of that Party pursuant to this Agreement.
4. This Agreement shall not apply to taxes imposed by states, local authorities or other political subdivisions, or possessions of a Party.

Article 2—Definitions

1. In this Agreement:

“Guernsey” means the islands of Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;

“New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;

“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;

Chapter I—*continued*Article 2—*continued*

“company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

“competent authority” means, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner and, in the case of Guernsey, the Director of Income Tax or the Director’s delegate;

“criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such laws are contained in the tax laws, the criminal code or other statutes;

“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 law of the requesting Party;

“information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

“information” means any fact, statement, document or record in whatever form;

“person” means a natural person, a company or any other body or group of persons;

“principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

“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;

“recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

“requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;

Chapter I—*continued*Article 2—*continued*

“requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

“resident of a Party” means

- (a) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax; and
- (b) in the case of Guernsey, a person who is a resident of Guernsey for the purposes of Guernsey tax.

A person is not a resident of a Party if the person is liable to tax in that Party in respect only of income from sources in that Party;

“tax” means any tax covered by this Agreement;

“transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 1 of that Party regarding transfer pricing or an equivalent form of adjustment between associated persons.

- 2. Notwithstanding paragraph 1, where a person, being an individual, is a resident of both Parties, then the person’s status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; but if a permanent home is available in both Guernsey and New Zealand, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;
 - (c) if the individual has an habitual abode in both Guernsey and New Zealand or in neither of them, the competent

Chapter I—*continued*Article 2—*continued*

authorities of the Parties shall endeavour to resolve the question by mutual agreement.

3. Notwithstanding paragraph 1, where a person other than an individual is a resident of both Parties then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.
4. 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 for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Chapter II

The exchange of information with respect
to taxes*Article 3—Object and scope of the exchange
of information*

1. 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 the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or the prosecution of civil or criminal 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 the possession of or 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 no deliberate actions are taken to unduly prevent or delay the effective exchange of information.

Chapter II—*continued*Article 3—*continued*

2. The competent authorities of the Parties shall also exchange such information as is relevant for carrying out the provisions of Chapters III and IV of this Agreement.
3. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7.

*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 3. 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, 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 the information gathering measures it considers relevant 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.

Chapter II—*continued*Article 4—*continued*

4. Each Party shall ensure that it has the authority, subject to the terms of Article 3, 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 and other persons, and within the constraints of Article 3 any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries.
5. This Chapter does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment 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 necessary 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) 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;

Chapter II—*continued*Article 4—*continued*

- (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 conforms with the laws and administrative practice 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 Chapter; and
 - (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 difficulty.
7. 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.

Chapter II—*continued*Article 5—*continued*

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 Chapter;
 - (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”) of the requested Party.
2. This Chapter shall not impose upon a requested Party any obligation to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(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 by the taxpayer.
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

Chapter II—*continued*Article 6—*continued*

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 7—Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Information provided to the competent authority of the requesting Party may not be used for any purpose other than for the purposes stated in Article 3 without the prior written consent of the requested Party.
3. Information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 3, 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.
4. Information provided to a requesting Party under this Chapter may not be disclosed to any other jurisdiction.

Article 8—Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including reasonable costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent

Chapter II—*continued*Article 8—*continued*

authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Chapter III

The allocation of taxing rights with respect
to certain income of individuals*Article 9—Government service*

1. (a) Salaries, wages and other similar remuneration paid by a Party to an individual in respect of services rendered to that Party shall be taxable only by that Party.
(b) However, such salaries, wages and other similar remuneration shall be taxable only by the other Party if the services are rendered in that Party and the individual is a resident of that Party who did not become a resident of that Party solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration paid in respect of services rendered in connection with any trade or business carried on by a Party may be taxed in accordance with the laws of that Party.

Article 10—Students

Payments which a student or business apprentice who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed by that Party, provided such payments arise from sources outside that Party.

Chapter IV Special provisions

Article 11—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 use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under this Agreement.
3. The Parties may agree on other forms of dispute resolution should this become necessary.
4. Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within 3 years of the first notification of the adjustment.
5. The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments.

Article 12—No prejudicial or restrictive measures

1. A Party shall not apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or citizens of the other Party so long as this Agreement is in force and effective.
2. For the purposes of this Article, "prejudicial or restrictive measures based on harmful tax practices" means measures applied by one Party to residents, nationals or citizens of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or ad-

Chapter IV—*continued*Article 12—*continued*

ministrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measures” include the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

Chapter V

Entry into force and termination

Article 13—Entry into force

1. 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 Agreement. This Agreement shall enter into force on the date of the last notification.
2. Upon the date of entry into force, this Agreement shall have effect:
 - (a) with respect to Chapter II:
 - (i) for criminal tax matters on the date of entry into force; and
 - (ii) for all other matters on the date of entry into force, but only in respect of taxable periods beginning on or after the date of entry into force or, where there is no taxable period, all charges to tax arising on or after the date of entry into force.
 - (b) with respect to Chapters III and IV:
 - (i) in respect of Guernsey tax, with effect from 1 January in the calendar year following entry into force; and
 - (ii) in respect of New Zealand tax, any income year beginning on or after 1 April in the calendar year following entry into force.

Chapter V—*continued*

Article 14—Termination

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing through the appropriate channel. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party.
3. If the 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, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at London, this 21st day of July, 2009, in duplicate in the English language.

For the Government
of New Zealand:
Hon Peter Dunne
Minister of Revenue of
New Zealand

For the States
of Guernsey:
Lyndon Sean Trott
Chief Minister

Rebecca Kitteridge,
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*, gives effect to an agreement between New Zealand and 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 comes into force when the parties have notified each other that domestic procedures for bringing the agreement into force have been completed.

Once it has entered into force, the agreement has effect in relation to the exchange of information relating to taxes and the allocation of taxing rights despite anything in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 June 2010.

This order is administered by the Inland Revenue Department.
