



Double Tax Agreements (Jersey) 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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Order

- 1 Title**
This order is the Double Tax Agreements (Jersey) 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 agreements**
- (1) The agreement set out in Schedule 1 comes into force on the date referred to in Article 11 of the agreement as the date on which the agreement enters into force.
 - (2) The agreement set out in Schedule 2 comes into force on the date referred to in Article 10 of the agreement as the date on which the agreement enters into force.
- 4 Purposes**
The arrangements specified in the agreements set out in Schedules 1 and 2 have been negotiated with Jersey 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 each agreement set out in Schedules 1 and 2 have effect according to the respective agreement.
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Schedule 1

cls 3(1), 4, 5

Agreement relating to exchange of information

Agreement between the Government of New Zealand and the Government of Jersey for the exchange of information with respect to taxes

Whereas the Government of New Zealand and the Government of Jersey (“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 Jersey 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 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:

Article 1**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 the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of such taxes, with respect to persons liable 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

Article 1—*continued*

remain applicable to the extent that they do not unduly prevent or delay the effective exchange of information.

Article 2

Taxes covered

- 1 This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Jersey:
 - (i) the income tax; and
 - (ii) the goods and services tax; and
 - (b) in the case of New Zealand, taxes of every kind and description.
- 2 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 existing taxes 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.
- 3 This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Party.

Article 3

Definitions

- 1 In this Agreement:
 - (a) “Jersey” means the Bailiwick of Jersey, including its territorial sea;
 - (b) “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;
 - (c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme”

Article 3—*continued*

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, in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (f) “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;
- (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;
- (h) “information” means any fact, statement, document or record in whatever form;
- (i) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (j) “person” includes an individual, a company or any other body or group 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) “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

Article 3—*continued*

- 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 to this Agreement which is requested to provide or has provided information in response to a request;
 - (o) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party; and
 - (p) “tax” means any tax covered by this Agreement.
- 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 4

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, 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 com-

Article 4—*continued*

ply with the request for information, the requested Party shall use the information gathering measure 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.
- 4 Each Party shall ensure that it has the authority, subject to the terms of Article 1, 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 1, 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; and
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.
- 5 This Agreement does not create an obligation for a 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.
- 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;

Article 4—*continued*

- (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 the 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;
 - (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 Agreement; 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 au-

Article 5—*continued*

thority 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.
- 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 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*) of the requested Party.

Article 6—*continued*

- 2 This Agreement 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 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 of the requested Party as compared with a national 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 1 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 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.

Article 7—*continued*

- 4 Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8

Costs

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

Article 9

No prejudicial or restrictive measures

- 1 Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Party so long as this Agreement is in force and effective.
- 2 For the purposes of this Article, a “prejudicial or restrictive measure” based on harmful tax practices means a measure applied by one Party to residents or nationals 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 administrative 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 measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

Article 9—*continued*

- 4 A “prejudicial or restrictive measure” does not include generally applicable measures, applied by either Party, such as Controlled Foreign Company rules, Foreign Investment Fund rules, transfer pricing rules, thin capitalisation rules, or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

Article 10

Mutual agreement procedures

- 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 shall endeavour to agree on other forms of dispute resolution should this become necessary.

Article 11

Entry into force

This Agreement shall enter into force when each Party has notified the other in writing through the appropriate channel of the completion of its necessary internal procedures for entering into force. Upon the date of entry into force, it 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 12 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, United Kingdom this 27th day of July, 2009, in duplicate in the English language.

For the Government
of New Zealand:
Derek Leask
New Zealand High
Commissioner to the
United Kingdom of Great Britain
and Northern Ireland

For the Government
of Jersey:
Senator Terry Le Sueur
Chief Minister

Schedule 2

cls 3(2), 4, 5

Agreement relating to taxing rights and transfer pricing adjustments

Agreement between the Government of New Zealand and the Government of Jersey for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments

The Government of New Zealand and the Government of Jersey (“the Parties”),

Recognising that the Parties have concluded an Agreement for the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

Article 1**Persons covered**

This Agreement shall apply to persons who are residents of one or both of the Parties.

Article 2**Taxes covered**

- 1 The existing taxes to which this Agreement shall apply are:
 - (a) in Jersey the income tax;
(hereinafter referred to as “Jersey tax”).
 - (b) in New Zealand, the income tax;
(hereinafter referred to as “New Zealand tax”).
- 2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

Article 2—*continued*

- 3 This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Party.

Article 3
Definitions

- 1 For the purposes of this Agreement, unless the context otherwise requires:
- (a) “Jersey” means the Bailiwick of Jersey, including its territorial sea;
 - (b) “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;
 - (c) “competent authority” means, in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
 - (d) “Party” means Jersey or New Zealand, as the context requires;
 - (e) “national”, in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
 - (f) “person” includes an individual, a company and any other body of persons;
 - (g) “tax” means Jersey tax or New Zealand tax, as the context requires; and
 - (h) “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 2 of that Party regarding transfer pricing.
- 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 law of that Party, for the purposes of the taxes to

Article 3—*continued*

which this Agreement applies, with 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 4
Resident

- 1 For the purposes of this Agreement, the term “resident of a Party” means:
 - (a) in the case of Jersey, a person who is a resident of Jersey for the purposes of Jersey tax; and
 - (b) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax.
- 2 A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.
- 3 Where by reason of the preceding provisions of this Article 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; if a permanent home is available in both Parties, 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 party in which the individual has an habitual abode cannot be determined, the individual shall be deemed to be a resident only of the party of which that individual is a national;
 - (d) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

Article 4—*continued*

- 4 Where by reason of paragraph 1 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.

Article 5

Pensions

- 1 Pensions (including government service pensions) and other similar remuneration paid to an individual who is a resident of a Party in consideration of past employment shall be taxable only by that Party.
- 2 Pensions and other payments made under the social security legislation of a Party to an individual who is a resident of the other Party shall be taxable only by that other Party.
- 3 However, paragraphs 1 and 2 shall not apply where the pension, payment or other similar remuneration is not subject to tax by the party of which the individual is a resident.

Article 6

Government service

- 1 (a) Salaries, wages and other similar remuneration, other than a pension, 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 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 7

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.

Article 8

Mutual agreement procedure in respect of transfer pricing adjustments

- 1 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.
- 2 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. They may also communicate with each other directly for the purposes of this Article.

Article 9

Exchange of information

The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement for the Exchange of Information with Respect to Taxes concluded by the Parties. (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

Article 10

Entry into force

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, and shall, provided an Agreement for the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

- (a) in respect of Jersey tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of New Zealand tax, for any income year beginning on or after 1 April next following the date on which this Agreement enters into force.

Article 11

Termination

- 1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party written notice of termination.
- 2 Such termination shall become effective:
 - (a) in respect of Jersey tax, in the year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given; and
 - (b) in respect of New Zealand tax, in the income year beginning on or after 1 April next following that in which the notice of termination is given.
- 3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through appropriate channels of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of such notice.

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

DONE at London, United Kingdom this 27th day of July, 2009, in duplicate in the English language.

For the Government
of New Zealand:
Derek Leask
New Zealand High
Commissioner to the
United Kingdom of Great Britain
and Northern Ireland

For the Government
of Jersey:
Senator Terry Le Sueur
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 the following agreements between New Zealand and Jersey:

- an agreement on the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes:
- an agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments.

Each agreement comes into force on the date when the parties have notified each other that domestic procedures for bringing the respective agreement into force have been completed.

Once they have entered into force, the agreements have effect in relation to the exchange of information relating to taxes, the allocation of taxing rights, and transfer pricing adjustments 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.
