

Jersey's Tax Information Exchange Agreements

As originally appeared in Finance – Jersey Spring 2009

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A Tax Information Exchange Agreement (“TIEA”) is an agreement concluded between two countries to promote international co-operation in tax matters by imposing on them a mutual and reciprocal obligation to exchange information about enforcement of their respective tax laws. The lack of effective exchange of information has been identified as a key criterion in determining whether a country has harmful tax practices.

THE OECD'S INITIATIVE

As a result of a global Organisation for Economic Co-operation and Development (“OECD”) forum to consider ways to address harmful tax practices, Jersey entered letters of political commitment with the OECD in February 2002 supporting the initiative and adopting the OECD's principles of exchange of information and transparency. It did so subject to the condition that all OECD Member States made the same kind of commitment so as to establish a “level playing field”.

Countries which have not made a similar political commitment are listed by the OECD as uncooperative tax havens. 35 jurisdictions have now made commitments and are considered co-operative jurisdictions by the OECD's Committee on Fiscal Affairs under these arrangements.

THE MODEL TIEA

In April 2002 a model TIEA was produced which is the standard for effective exchange of information. Jersey's parliament, the States of Jersey, accepted the Model Agreement in October 2002 and subsequently passed the **Taxation (Implementation) (Jersey) Law 2004** enabling it to make regulations to implement agreements with, and obligations owed to, governments of other countries regarding taxation.

The Model Agreement covers both civil and criminal information requests and exchanges. However information is not automatically or spontaneously exchanged. Requests for

information must conform to the terms of the TIEA. They can only be entertained where the subject of the request is under examination or investigation in the requesting jurisdiction and so “fishing exercises” are discouraged. The Model Agreement contains strict confidentiality provisions which comply with Jersey’s internal and international privacy obligations. Therefore the request for information would be declined if it were to disclose, e.g., a trade secret, or if it were protected by client-attorney privilege. In addition, in Jersey a person affected by the Comptroller of Income Tax’s decision to act on the request has a right of appeal to the Royal Court.

JERSEY’S TIEA PARTNERS

Jersey has now signed TIEAs with the United States of America (November 2002); Netherlands (March 2008); Germany (July 2008); and Sweden, Norway, Iceland, Greenland, Finland, Faroes and Denmark (all in October 2008). Countries with which both a TIEA and a benefits package are well advanced include Australia and New Zealand. Other countries to which approaches have been made include Canada, Italy and Spain.

On 10 March 2009 Jersey exchanged letters with the United Kingdom to put in place a TIEA and amend Jersey’s 1952 double taxation arrangement, similar to the letters signed by Guernsey and the Isle of Man with the United Kingdom in January 2009. Jersey will also exchange letters with France and Ireland during March 2009.

ECONOMIC BENEFITS PACKAGES

As part of its negotiations for signature of a TIEA with individual OECD Member States, Jersey has received an economic benefits package which helps to offset any costs expected to be incurred in supporting and complying with the creation of the OECD’s desired equal trading environment. The kinds of benefits Jersey has negotiated with other countries have included:

- public recognition that Jersey is a jurisdiction which complies with international standards of financial regulation, anti-money laundering and combating the financing of terrorism;

- agreement to the effect that Jersey would not be included on any list of “tax havens”;
- the alleviation of some otherwise unequal or discriminatory tax burdens in relation to double taxation or withholding tax; and
- agreement to amend the package with Jersey if the jurisdiction later enters a TIEA with another country having an economic benefits package with components adversely impacting on the package agreed with Jersey.

ROLE OF TIEAs IN THE CURRENT FINANCIAL CRISIS

TIEAs have a key role in the regulatory response to the current global financial crisis. They facilitate transparency. They can indicate which jurisdictions are open about their banking and taxation regimes and co-operate in the fight against fiscal crime. As well as implementing TIEAs in support of the OECD initiative, Jersey has introduced a suite of legislation to bring it into compliance with the Financial Action Task Force on Money Laundering recommendations and requirements, thereby enhancing Jersey’s stature as a responsible international financial centre.

Jersey is confident therefore that its good governance, its track record of transparency and co-operation, and the sound regulation of its finance industry will exclude it both from any blacklist established by the US Treasury Secretary under the US Stop Tax Haven Abuse Act and from any crackdown on offshore jurisdictions by the G20 nations.

Should you have any questions or requests for further information, please contact:

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March 2009

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