

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 7 OF 2016

TAX INFORMATION EXCHANGE (GUERNSEY) ORDER 2016

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TAX INFORMATION EXCHANGE (GUERNSEY) ORDER

**TAX INFORMATION EXCHANGE (GUERNSEY) ORDER 2016
MADE BY THE GOVERNOR ACTING ON THE ADVICE OF
CABINET UNDER SECTION 5 OF THE TAX INFORMATION
EXCHANGE ACT (CAP. 17.24)**

1. Citation

This Order may be cited as the Tax Information Exchange (Guernsey) Order, 2016.

2. Arrangement to have the force of law

The Arrangement between the Government of Montserrat (as authorised by the Government of The United Kingdom of Great Britain and Northern Ireland) and the States of Guernsey on the exchange of information relating to tax matters, done with the Chief Minister for the States of Guernsey, at St. Peter Port on 7 April 2014 and at Brades, Montserrat on 19 May, 2014 and set out in the Schedule has the force of law in Montserrat.

3. Negative resolution

This Order is subject to a negative resolution.

SCHEDULE

(Section 2)

**ARRANGEMENT
BETWEEN
THE GOVERNMENT OF MONTSERRAT
(AS AUTHORISED BY THE GOVERNMENT OF
THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND)
AND
THE STATES OF GUERNSEY
ON
THE EXCHANGE OF INFORMATION RELATING TO TAX
MATTERS**

Whereas the States of Guernsey and the Government of Montserrat recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Parties wish to enter into an Arrangement that respects the constitutional relationship between the Parties;

Whereas it is acknowledged that the Parties have the ability to enter into a tax exchange arrangement with each other in accordance with that constitutional relationship;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

Now therefore, the Parties have agreed to conclude the following Arrangement which contains obligations on the part of the Parties only:

ARTICLE 1
OBJECT AND SCOPE OF THE ARRANGEMENT

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 Arrangement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Arrangement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2
JURISDICTION

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.

ARTICLE 3
TAXES COVERED

1 The taxes which are the subject of this Arrangement are:

- a) in the case of Guernsey:
 - i) income tax;
 - ii) dwelling profits tax;
- b) in the case of Montserrat:
 - i) Income tax;
 - ii) Company Tax;
 - iii) Withholding Tax.

2 This Arrangement shall also apply to any identical or taxes imposed after the date of signature of this Arrangement in addition to, or in place of, the existing taxes or substantially similar taxes if the Parties so agree. The Arrangement shall also apply to such other taxes as may be agreed in an exchange of letters between the Parties. The competent authorities of each Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Arrangement.

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3 This Arrangement shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Party.

ARTICLE 4
DEFINITIONS

1 For the purposes of this Arrangement, unless the context otherwise requires, the term:

- a) “Guernsey” means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and the territorial sea adjacent thereto, 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;
- b) “Montserrat” when used in a geographical sense, means the United Kingdom Overseas Territory of Montserrat;
- c) “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;
- 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 Guernsey, the Director of Income Tax or his delegate and, in the case of Montserrat, the Comptroller of Inland Revenue;
- f) “Party” means the States of Guernsey or the Government of Montserrat as the context requires;
- g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether they are contained in the tax laws, the criminal code or other statutes;

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- h) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Arrangement which is liable to prosecution under the criminal laws of the Requesting Party;
- i) “information” means any fact, statement, document or record in whatever form;
- j) “information gathering measures” means laws and judicial, regulatory or administrative procedures enabling a Requested Party to obtain and provide the information requested;
- k) “person” means a natural person, a company or any other body or group of persons;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “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) “recognised stock exchange” means the Channel Islands Stock Exchange, the Eastern Caribbean Securities Exchange and any other stock exchange agreed upon by the competent authorities of the Parties;
- o) “Requested Party” means the Party to this Arrangement which is requested to provide or has provided information or assistance in response to a request;
- p) “Requesting Party” means the Party to this Arrangement submitting a request for or having received information or assistance from the Requested Party;
- q) “tax” means any tax covered by this Arrangement.

2 As regards the application of this Arrangement 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 5

EXCHANGE OF INFORMATION UPON REQUEST

1 The competent authority of a Requested Party shall provide upon request in writing by the Requesting Party information for the purposes specified in Article 1 of this Arrangement. 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 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 within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

2 If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use all relevant information gathering measures 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 and within the constraints of Article 2, 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, foundations and other persons, including ownership information on all such persons in an ownership chain;

ii) in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and

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iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5 This Arrangement 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 possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is required;
- c) the nature of the information sought 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) the grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession of or obtainable by the person subject to 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 this Arrangement and the laws and administrative practices of the Requesting Party, and 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
- i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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7 The competent authority of the Requested Party shall use its best endeavours to forward the requested information to the Requesting Party with the least possible delay. To ensure a prompt response, the competent authority of the Requested Party shall:

- a) confirm the 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 receipt of the request; and
- b) if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or it refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party, explaining the reasons for its inability or the nature of the obstacles or the reasons for its refusal.

ARTICLE 6

TAX EXAMINATIONS (OR INVESTIGATIONS) 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 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 be present at the appropriate part of a tax examination in the territory of the Requested Party, to the extent permitted under its domestic laws.

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.

4 For the purposes of this Article, the term "domestic laws" refers to laws or instruments governing entry into, or exit from, the territories of the Parties.

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 Arrangement;
- 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.

2 This Arrangement shall not impose on a Requested Party any obligation to provide items subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

3 The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

4 A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed.

5 The Requested Party shall not be required to obtain or 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 own laws for purposes of the administration or enforcement of its own tax laws.

6 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 8
CONFIDENTIALITY**

- 1 All information provided and received by the competent authorities of the Parties shall be kept confidential.
- 2 Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party 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 Information provided to a Requesting Party under this Arrangement shall not be disclosed to any other jurisdiction.

**ARTICLE 9
SAFEGUARDS**

The rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable. However, the Requested Party shall nevertheless use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

**ARTICLE 10
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 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 significant.

**ARTICLE 11
IMPLEMENTING LEGISLATION**

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Arrangement.

ARTICLE 12
MUTUAL AGREEMENT PROCEDURE

1 Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Arrangement, the competent authorities shall use their best endeavours 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 Articles 5, 6 and 10.

3 The competent authorities of the Parties may communicate with each other directly for the purposes of this Arrangement.

4 The Parties may also agree on other forms of dispute resolution.

ARTICLE 13
ENTRY INTO FORCE

1 This Arrangement is subject to the procedures for approval by the Parties. Letters confirming that such procedures have been undertaken shall be exchanged as soon as possible.

2 This Arrangement shall enter into force on the first day of the second month after the later of the dates on which each of the Parties has notified the other in writing that such procedures for approval have been complied with and, upon entry into force, its provisions shall have effect in both 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 This Arrangement shall continue in effect indefinitely, but either Party may terminate the Arrangement by serving a notice of termination in writing through appropriate channels to the competent authority of the other Party.

2 Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party.

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3 If the Arrangement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Arrangement.

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

DONE, at St. Peter Port, this 7th day of April, 2014 and at Brades, Montserrat, this 19th day of May 2014, in duplicate.

DEPUTY JONATHAN LE TOCQ
Chief Minister

REUBEN T. MEADE
Premier

FOR THE STATES OF GUERNSEY

**FOR THE GOVERNMENT
OF MONTSERRAT**

Made by the Governor acting on the advice of Cabinet this 22nd day of January, 2015.

(Sgd.) Marjorie Smith
CLERK OF CABINET

Published by the Clerk of Cabinet by exhibition at the Office of the Legislature, Farara Plaza, Brades, MSR1110, this 19th day of January, 2016.

(Sgd.) Marjorie Smith
CLERK OF CABINET