

Ordinance of the States

**XI
2005**

Made	30th June, 2005
Coming into operation	1st July, 2005

**The Foreign Tax (Retention
Arrangements) (Guernsey and
Alderney) Ordinance, 2005**

**The Foreign Tax (Retention Arrangements)
(Guernsey and Alderney) Ordinance, 2005**

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The Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005

THE STATES, in pursuance of their Resolution of the 21st June, 2004^a, and in exercise of the powers conferred on them by sections 1 to 5 of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

PART I

COMMENCEMENT OF LAW & APPROVAL OF AGREEMENTS

Commencement of Law.

1. The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004 ("**the Law**") shall come into force on the 1st July, 2005.

Approved international agreements.

2. (1) The international agreements on the taxation of savings income made between Guernsey and the countries listed in Schedule 1 on the dates listed in that Schedule, entered into for the purpose of applying the retention tax in the transitional period, are approved for the purposes of the Law.

(2) The international agreements approved by subsection (1) are referred to in this Ordinance as the "**approved international agreements**".

^a Billet d'État No. VIII of 2004.

^b Order in Council No. VIII of 2005.

PART II
COMPETENT AUTHORITY

Competent authority in Guernsey.

3. The Administrator of Income Tax ("**the Administrator**") is the competent authority in Guernsey for the purposes of the Law and the approved international agreements.

Functions of Administrator.

4. (1) The functions of the Administrator include (without prejudice to his functions conferred by or under the Income Tax Law or any other enactment)-

- (a) the functions assigned to him by or under this Ordinance, and
- (b) the functions assigned to the competent authority in Guernsey by or under the approved international agreements.

(2) The Administrator may also, having regard to the provisions of this Ordinance and the approved international agreements, do anything that appears to him to be necessary or expedient for the purposes of -

- (a) the implementation and administration of those provisions, and
- (b) the exercise by him of the functions referred to in subsection (1).

Oath of Administrator.

5. The oath taken by the Administrator and other persons under section 206 of the Income Tax Law has effect in relation to information required to be kept confidential by paragraph 12 of Schedule 2 and received by or available to them as it has effect in relation to information described in the oath taken by them.

PART III

COLLECTION OF RETENTION TAX

Application of retention tax regime.

6. Schedule 2 has effect for the purposes of the implementation of the approved international agreements.

Payment and transfer of retention tax.

7. (1) Retention tax deducted from interest payments by paying agents in accordance with the provisions of this Ordinance -

- (a) shall be paid to the Administrator on or before the 31st March in the year following the year of charge in which the interest payments were made, and
- (b) shall be transferred by the Administrator (subject to any deductions authorised by those provisions) to the competent authority of the other contracting party,

in accordance with the requirements of or under those provisions.

(2) The Administrator shall issue a receipt to paying agents for the amount of any retention tax deducted from interest payments by them and paid to him in accordance with the provisions of this Ordinance.

(3) Retention tax -

- (a) shall be paid to the Administrator in sterling, US dollars, euros, Swiss francs or such other currency as he may determine ("**the permitted currencies**"), and
- (b) shall be transferred by him to the competent authority of the other contracting party in the same currency or such other currency, whether or not a permitted currency, as he may determine.

(4) Where the interest payment from which retention tax is deducted is made in a currency other than a permitted currency -

- (a) the amount of the deduction shall be converted by the paying agent into a permitted currency, and
- (b) the amount payable to the Administrator under subsection (1)(a) is the amount of the deduction converted into that permitted currency at the rate of exchange current at the time of conversion.

(5) The Department may by regulation amend subsections (3) and (4).

Certificate for UCITS option.

8. (1) For the purposes of paragraph 7(3) of Schedule 2, the Administrator may issue a certificate to a relevant entity enabling the entity to be treated for the purposes of this Ordinance as an UCITS or an equivalent undertaking

as referred to in paragraph 7(2)(c) of Schedule 2.

(2) The Administrator shall not issue a certificate to a relevant entity unless -

(a) the entity qualifies for the option of being so treated under paragraph 7(3) of Schedule 2, and

(b) the entity has provided such information in support of its application for a certificate as the Administrator may require.

(3) A certificate issued to a relevant entity by the Administrator -

(a) may be limited in time,

(b) may be subject to conditions, and

(c) may be terminated by the Administrator if -

(i) the entity no longer qualifies for the option under paragraph 7(3) of Schedule 2, or

(ii) any false, deceptive or misleading information was provided in support of the application for the certificate.

(4) In this section a "**relevant entity**" means an entity established in Guernsey to which interest is paid or for which interest is secured for the benefit of the beneficial owner.

Keeping and production of records.

9. (1) A paying agent shall keep accounts, records and other documents of such description, in such form, in respect of such periods, and containing such information and particulars as may be prescribed, in respect of -

(a) retention tax, interest payments and beneficial owners, and

(b) such other matters arising out of or related to -

(i) retention tax, interest payments and beneficial owners, and

(ii) the approved international agreements,

as may be prescribed.

(2) A paying agent shall furnish to the Administrator, at such times, intervals and places as may be prescribed or as may be specified by the Administrator, any accounts, records and other documents kept pursuant to -

(a) regulations under subsection (1), or

(b) any other requirement imposed by or under any enactment or statutory instrument, so far as they relate to or apply in respect of matters described in paragraph (a) or (b) of subsection (1),

and those accounts, records and documents shall be accompanied by such

information and particulars (which shall be in such form) as may be prescribed or as may be required by or under any enactment or statutory instrument or as may be specified by the Administrator.

(3) In this section "**prescribed**" means prescribed by the Department by regulation.

Deduction of retention tax not to constitute breach of contract, etc.

10. The deduction by a paying agent of retention tax from an interest payment in accordance with the provisions of this Ordinance does not constitute a breach of any contractual or other duty to which he is subject to make the interest payment without any such deduction.

Appeals.

11. A person aggrieved by a decision of the Administrator in the performance of his functions assigned by or under this Ordinance or the approved international agreements may appeal against the decision in accordance with the provisions of section 76 of the Income Tax Law as if references in that section -

- (a) to a direction of the Administrator were references to such a decision, and
- (b) to the appropriate body were references to the Guernsey Tax Tribunal,

and the provisions of Part VII of that Law ("appeals") shall apply accordingly.

PART IV
PROVISION OF INFORMATION, ETC

Returns as to interest payments.

12. (1) A paying agent established in Guernsey to whom a notice for that purpose is given shall, whether or not he is liable to account for any retention tax, deliver to the Administrator, within such period as the Administrator may specify in the notice, not being less than 21 days from the date of the issue of the notice, a return in the form and manner required by the Administrator of -

- (a) the total amount of retention tax (if any) deducted by him from interest payments made by him, in the year of charge specified in the notice, to beneficial owners resident in each other contracting party, and
- (b) any interest payment which -
 - (i) was made by him, in the year of charge specified in the notice, to a beneficial owner resident in another contracting party, and
 - (ii) by virtue of the provisions of paragraph 3(1)(a) of Schedule 2, is not subject to retention tax.

(2) Where a paying agent established in Guernsey has not received, before the 31st January in any year, a notice from the Administrator under subsection (1) requiring him to make a return of the matters specified in that subsection, he shall give notice within 21 days thereafter to the Administrator of -

- (a) the total amount of retention tax (if any) deducted by him from interest payments made by him, in the year of charge ending on the 31st December in the preceding year, to beneficial owners resident in each

other contracting party, and

- (b) any interest payment which -
 - (i) was made by him, in that year of charge, to a beneficial owner resident in another contracting party, and
 - (ii) by virtue of the provisions of paragraph 3(1)(a) of Schedule 2, is not subject to retention tax.

Undertakings, etc. as to information.

13. (1) The Administrator may, when disclosing or transmitting information to any person (including any competent authority of another contracting party) in accordance with paragraph 12 of Schedule 2 -

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him,
- (b) require that person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that the confidentiality of the information is protected,

as the Administrator thinks fit for the purpose of ensuring that the information is not disclosed or used in contravention of that paragraph or in contravention of the

approved international agreements.

(2) An undertaking under subsection (1) shall be given subject to such terms and conditions, and may contain such ancillary or related provisions, as the Administrator may require.

Disclosure of information not to constitute breach of contract, etc.

14. A requirement imposed by or under this Ordinance has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

PART V

OFFENCES & GENERAL PROVISIONS

General offence.

15. A person who without reasonable excuse contravenes any requirement imposed by or under this Ordinance is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

Disclosure of confidential information.

16. (1) A person who -
- (a) discloses or uses information in contravention of paragraph 12 of Schedule 2, or
 - (b) contravenes any undertaking given under section 13(1),

is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) In proceedings against a person for an offence under subsection (1) it is a defence for him to show that he did not know and had no reason to suspect that the information in question was to be regarded as confidential.

False information.

17. A person who, in purported compliance with a requirement imposed by or under this Ordinance, or otherwise for the purposes of this Ordinance, the Law or the approved international agreements -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information which is false,

deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the uniform scale, or to both.

Liability of directors, etc.

18. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Aiding, abetting, etc.

19. A person who aids, abets, counsels or procures the commission of an offence under this Ordinance is guilty of an offence and may be proceeded against and punished as if he were the principal offender.

Defence of due diligence.

20. In any proceedings for an offence under this Ordinance it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

Interpretation.

21. (1) In this Ordinance, unless the context requires otherwise -

"**Administrator**" means the Administrator of Income Tax referred to in section 205 of the Income Tax Law, and includes the Assistant Administrator of Income Tax,

"**approved international agreement**" means an international agreement made between Guernsey and a country listed in Schedule 1 and approved by section 2(1),

"**beneficial owner**" : see paragraph 5 of Schedule 2,

"**competent authority**" of another contracting party means the person or body specified in the approved international agreement as the competent authority of that other contracting party,

"**competent authority in Guernsey**" means the Administrator,

"**contracting party**" means a country which is a party to an approved international agreement,

"**contravention**" includes failure to comply, and related expressions shall be construed accordingly,

"**country**" includes a territory,

"**Department**" means the States Treasury and Resources Department,

"**Directive 85/611/EEC**" means Council Directive 85/611/EEC of

the 20th December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS),

"**functions**" includes powers and duties,

"**Guernsey**" includes Alderney and Herm,

"**Income Tax Law**" means the Income Tax (Guernsey) Law, 1975^c,

"**information**" includes documents and information recorded in any form (including, without limitation, in electronic form), and -

- (a) in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form,
- (b) without prejudice to paragraph (a), references to the production of information, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language,

^c Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; the Income Tax (Guernsey) (Amendment) Law, 2004; the Income Tax (Guernsey Tax Tribunal) (Amendment) Law, 2004; and the Income Tax (Pension Amendments) (Guernsey) Law, 2004.

"interest payment" : see paragraph 8 of Schedule 2, which is subject to subsection (2) of this section,

"Law" means the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004,

"other contracting party" means a country other than Guernsey which is a party to an approved international agreement, being a country listed in Schedule 1,

"paying agent " : see paragraph 7 of Schedule 2,

"production" of information, and cognate expressions : see the definition above of "information",

"relevant entity" : see section 8(4),

"retention tax" means the tax to be deducted from interest payments by paying agents during the transitional period under the approved international agreements,

"States" means the States of Guernsey,

"transitional period" means the transitional period as defined in Article 10 of Council Directive 2003/48/EEC on the taxation of savings income in the form of interest payments^d,

^d Official Journal L 157, 26/06/2003, p. 0038 - 0048.

"UCITS" : see the definition above of "Directive 85/611/EEC",

"**uniform scale**" means the scale of fines established by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e,

"**withholding tax**" means the tax to be deducted from interest payments by paying agents in the other contracting parties during the transitional period under the approved international agreements,

"**year of charge**" : see section 1 of the Income Tax Law^f.

(2) In this Ordinance, for the avoidance of doubt and without limitation, "**interest payment**" does not include interest of a class or description which (whether by reference to the circumstances in which the interest is paid or the nationality, residence or domicile of the beneficial owner) is not subject to tax in the other contracting party under the laws relating to the taxation of income in force there.

(3) The Interpretation (Guernsey) Law, 1948^g applies to the interpretation of this Ordinance.

(4) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^e Ordres en Conseil Vol. XXXI, p. 278.

^f Section 1 of the Income Tax Law provides - "A year the income for which is to be assessed and for which tax is to be charged shall be the calendar year, and any such year is in this Law referred to as a "year of charge".".

^g Ordres en Conseil Vol. XIII, p. 355.

General provisions as to regulations.

22. (1) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Ordinance to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Extent.

23. This Ordinance shall apply to Guernsey, Alderney and Herm.

Citation.

24. This Ordinance may be cited as the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005.

Commencement of Ordinance.

25. (1) Section 1 shall come into force on the 1st July, 2005.

(2) The remainder of this Ordinance shall come into force on the date appointed by regulations of the Policy Council, and different dates may be appointed for different provisions or for the purposes of different approved international agreements^h.

Suspension of application of Ordinance.

26. The Policy Council by regulation -

- (a) may suspend, and
- (b) may subsequently reinstate,

the operation of all or any of the provisions of this Ordinance, either generally or

^h The appointed day is the 1st July, 2005 (see the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005 (Commencement) Regulations, 2005).

for the purposes of any approved international agreement specified in the regulation.

SCHEDULE 1

COUNTRIES WITH WHICH APPROVED INTERNATIONAL
AGREEMENTS ARE MADE

COUNTRY WITH WHICH APPROVED INTERNATIONAL AGREEMENT MADE ("CONTRACTING PARTY")	DATE ON WHICH AGREEMENT SIGNED
Austria	19 th November, 2004
Belgium	19 th November, 2004
Cyprus	19 th November, 2004
Czech Republic	19 th November, 2004
Denmark	19 th November, 2004
Estonia	19 th November, 2004
Finland	19 th November, 2004
France	19 th November, 2004
Germany	19 th November, 2004
Greece	19 th November, 2004
Hungary	19 th November, 2004
Ireland	19 th November, 2004
Italy	19 th November, 2004
Latvia	19 th November, 2004
Lithuania	19 th November, 2004
Luxembourg	19 th November, 2004
Malta	19 th November, 2004
Netherlands	19 th November, 2004
Poland	19 th November, 2004

Portugal	19 th November, 2004
Slovakia	19 th November, 2004
Slovenia	19 th November, 2004
Spain	17 th February, 2005
Sweden	19 th November, 2004
United Kingdom	19 th November, 2004

SCHEDULE 2

IMPLEMENTATION OF THE APPROVED INTERNATIONAL AGREEMENTS

Arrangement of paragraphs

1. Retention of tax by paying agents.
2. Reporting of information by paying agents.
3. Exceptions to the retention tax procedure.
4. Basis of assessment for retention tax.
5. Definition of beneficial owner.
6. Identity and residence of beneficial owners.
7. Definition of paying agent.
8. Definition of interest payment.
9. Retention tax revenue sharing.
10. Elimination of double taxation.
11. Transitional provisions for negotiable debt securities.
12. Confidentiality.

ANNEX: List of related entities referred to in paragraph 11.

Retention of tax by paying agents.

1. Interest payments as defined in paragraph 8 which are made by a paying agent established in Guernsey to beneficial owners within the meaning of paragraph 5 who are residents of another contracting party shall, subject to paragraph 3, be subject to a retention from the amount of interest payment during the transitional period, starting at the date of commencement of this Ordinance.

The rate of retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Reporting of information by paying agents.

2. Where the provisions of paragraph 3(1)(a) apply, the paying agent shall report to the Administrator -

- (a) the identity and residence of the beneficial owner established in accordance with paragraph 6,
- (b) the name and address of the paying agent,
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest,
- (d) information concerning the interest payment specified in paragraph 4(1).

The minimum amount of information concerning interest payments to be reported by the paying agent shall be restricted to the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund.

Exceptions to the retention tax procedure.

3. (1) In the levying of retention tax in accordance with paragraph 1, the following procedures shall apply in order to ensure that beneficial owners may request that no tax be retained -

- (a) the beneficial owner may avoid the retention tax by expressly authorising his paying agent to report the

interest payments to the Administrator.

Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent,

- (b) retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with subparagraph (2).

(2) The certificate issued, at the request of the beneficial owner, by the competent authority of the contracting party of the country of residence for tax purposes shall indicate -

- (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner,
- (b) the name and address of the paying agent,
- (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such a certificate shall be valid for a period not exceeding three years.

Where the Administrator is requested by a beneficial owner resident in Guernsey to issue such a certificate for the purposes of the approved international agreements he shall do so within two months following such request.

(3) Where subparagraph (1)(a) applies, the Administrator shall communicate the information referred to in paragraph 2 to the competent authority of the contracting party of the country of residence of the beneficial owner.

Such communications shall be automatic and shall take place at least once a year, within six months following the end of the year of charge, for all interest payments made during that year.

Basis of assessment for retention tax.

4. (1) A paying agent established in Guernsey shall levy retention tax in accordance with paragraph 1 as follows -

- (a) in the case of an interest payment within the meaning of paragraph 8(1)(a): on the gross amount of interest paid or credited,
- (b) in the case of an interest payment within the meaning of paragraph 8(1)(b) or 8(1)(d): on the amount of interest or income referred to in that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund,
- (c) in the case of an interest payment within the meaning of paragraph 8(1)(c): on the amount of interest referred to in that paragraph,
- (d) in the case of an interest payment within the meaning of paragraph 8(4): on the amount of interest

attributable to each of the members of the entity referred to in paragraph 7(2) who meet the conditions of paragraph 5(1),

(e) pursuant to paragraph 8(5): on the amount of annualised interest.

(2) For the purposes of items (a) and (b) of subparagraph (1), the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim.

If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of withholding or retention tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, an economic operator paying interest to, or securing interest for, an entity referred to in paragraph 7(2) in another contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last sentence of paragraph 7(2).

Definition of beneficial owner.

5. (1) For the purposes of this Ordinance "**beneficial owner**" shall

mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit.

An individual is not deemed to be the beneficial owner when he -

- (a) acts as a paying agent within the meaning of paragraph 7(1) of this Schedule,
- (b) acts on behalf of -
 - (i) a legal person,
 - (ii) an entity which is taxed on its profits under the general arrangements for business taxation,
 - (iii) an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in Guernsey, or
 - (iv) an entity referred to in paragraph 7(2) of this Schedule,

and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment,

- (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither subparagraph (1)(a) nor (1)(b) apply, it shall take reasonable steps to establish the identity of the beneficial owner.

If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Identity and residence of beneficial owners.

6. (1) A paying agent established in Guernsey shall identify the beneficial owners and their residence for the purposes of this Ordinance in accordance with the procedures established in subparagraphs (2) and (3).

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows -

- (a) for contractual relations entered into before the 1st January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002,

- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the contracting party of residence for tax purposes.

These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner.

If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner.

If the tax identification number is not mentioned on the passport, the official identity card or any other documentary proof of identity (including, possibly, the certificate of residence for tax purposes) presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into.

Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address -

- (a) for contractual relations entered into before 1st January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002,
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any other documentary proof of identity presented by the beneficial owner and according to the following procedure.

For individuals presenting a passport or official identity card issued by a contracting party who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the appropriate authority of the third country in which the individual claims to be resident.

Failing the presentation of such a certificate, the contracting party which issued the passport or other

official document shall be considered to be the country of residence.

Definition of paying agent.

7. (1) For the purposes of this Ordinance, "**paying agent**" means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in Guernsey or in another contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment.

This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that -

- (a) it is a legal person with the exception of those legal persons referred to in subparagraph (5), or
- (b) its profits are taxed under the general arrangements for business taxation, or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in Guernsey.

An economic operator established in Guernsey paying interest to, or securing interest for, such an entity established in another contracting party which is

considered a paying agent under this subparagraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the Administrator, who shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in subparagraph (2) shall, however, have the option of being treated for the purposes of this Schedule as an UCITS or equivalent undertaking as referred to in item (c) of subparagraph (2).

The exercise of this option shall, in the case of an entity established in Guernsey, require a certificate to be issued by the Administrator and presented to the economic operator by that entity.

The detailed rules for this option for entities established in Guernsey are specified in section 8 of this Ordinance.

(4) Where the economic operator and the entity referred to in subparagraph (2) are established in Guernsey, the entity shall comply with the provisions of this Schedule when it acts as a paying agent.

(5) The legal persons exempted from item (a) of subparagraph (2) are -

(a) in Finland, avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag,

(b) in Sweden, handelsbolag (HB) and kommanditbolag (KB).

Definition of interest payment.

8. (1) For the purposes of this Schedule "**interest payment**" shall mean -

- (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

Penalty charges for late payment shall not be regarded as interest payment,

- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in item (a),
- (c) income deriving from interest payments either directly or through an entity referred to in paragraph 7(2), distributed by -
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC,
 - (ii) an equivalent undertaking for collective investment established in Guernsey,
 - (iii) entities which qualify for the option under paragraph 7(3), or

- (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Guernsey,
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in item (a) -
- (i) an UCITS authorised in accordance with Directive 85/611/EEC, or
 - (ii) an equivalent undertaking for collective investment established in Guernsey,
 - (iii) entities which qualify for the option under paragraph 7(3),
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside Guernsey.

However, income mentioned under item (d) shall be included in the

definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of items (a) and (b).

(2) As regard subparagraphs (1)(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards subparagraph (1)(d), when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that subparagraph, that percentage shall be considered to be above 40%.

Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in subparagraph (1), is paid to or credited to an account held by an entity referred to in paragraph 7(2), such entity not having qualified for the option under paragraph 7(3), such interest shall be considered an interest payment by such entity.

(5) As regards subparagraphs (1)(b) and (d), the Administrator may require paying agents in Guernsey to annualise the interest over a period of time which may not exceed one year, and to treat such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from subparagraphs (1)(c) and (d), there shall be excluded from the definition of interest payment any income referred

to in those provisions from undertakings or entities established within Guernsey where the investment in debt claims referred to in subparagraph (1)(a) of such undertakings or entities has not exceeded 15% of their assets.

Likewise, by way of derogation from subparagraph (4), there shall be excluded from the definition of interest payment in subparagraph (1) interest paid or credited to an account of an entity referred to in paragraph 7(2) which has not qualified for the option under paragraph 7(3) and is established within Guernsey, where the investment of such an entity in debt claims referred to in subparagraph (1)(a) has not exceeded 15% of its assets.

(7) The percentage referred to in subparagraph (1)(d) and subparagraph (3) shall from 1st January, 2011 be 25%.

(8) The percentages referred to in subparagraph (1)(d) and in subparagraph (6) shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Retention tax revenue sharing.

9. (1) The Administrator shall retain 25% of the retention tax deducted under this Schedule for crediting to the General Revenues of the States and transfer the remaining 75% of the revenue to the other contracting party.

(2) Where the Administrator levies retention tax in accordance with paragraph 4(4) he shall retain 25% of the revenue for crediting to the General Revenues of the States and transfer 75% to the other contracting party.

(3) Such transfers shall take place for each year in one instalment

at the latest by the 30th June following the end of the year of charge.

Elimination of double taxation.

10. (1) The Administrator shall ensure the elimination of any double taxation which might result from the imposition by another contracting party of the withholding tax in accordance with the following provisions -

- (i) if interest received by a beneficial owner resident in Guernsey has been subject to withholding tax in another contracting party, the amount of the tax retained shall (subject to the provision to the Administrator of such information as he may require to satisfy himself that the deduction has been made) be allowed in or towards satisfaction of any liability to income tax of the beneficial owner under that Law.

Where the amount of the tax retained exceeds the liability to income tax of the beneficial owner under the Income Tax Law, the Administrator shall (subject to the provision to the Administrator of such information as aforesaid) repay the excess amount of tax retained to the beneficial owner,

- (ii) if, in addition to the withholding tax referred to in any approved international agreement, interest received by a beneficial owner resident in Guernsey has been subject to any other type of withholding tax and the Administrator (in accordance with the provisions of the Income Tax Law and any double taxation arrangement) allows the amount of the tax withheld in

or towards satisfaction of any liability to income tax of the beneficial owner under that Law, such other withholding tax shall be credited before the procedure in item (i) is applied.

(2) The Administrator may replace the tax credit mechanism referred to in subparagraph (1) by a refund of the retention tax referred to in paragraph 1.

Transitional provisions for negotiable debt securities.

11. (1) During the transitional period, but until the 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before the 1st March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of paragraph 8(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002.

However, should the transitional period continue beyond 31st December, 2010, the provisions of this paragraph shall only continue to apply in respect of such negotiable debt securities -

- (a) which contain gross up and early redemption clauses, and
- (b) where the paying agent is established in a contracting party applying withholding or retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial

owner resident in another contracting party.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Schedule, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of paragraph 8(1)(a).

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the immediately preceding sentence, such further issue shall be considered a debt claim within the meaning of paragraph 8(1)(a).

(2) Nothing in this paragraph shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

Confidentiality.

12. (1) All information provided and received by the Administrator shall be kept confidential.

(2) Information provided to the Administrator by the competent authority of another contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of that other contracting party.

(3) Information provided by the Administrator to the competent authority of another contracting party shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons

or authorities only for such purposes or for oversight purposes, including the determination of any appeal.

For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(4) Where the Administrator considers that information which he has received from the competent authority of a contracting party is likely to be useful to the competent authority of another contracting party, he may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN PARAGRAPH 11

For the purposes of Paragraph 11 of Schedule 2, the following entities will be considered to be a related entity acting as a public authority or whose role is recognised by an international treaty -

A. Entities within the European Union:

BELGIUM	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
SPAIN	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon)

Gobierno de las Islas Canarias (Government of the Canary Islands)
Gobierno de Murcia (Government of Murcia)
Gobierno de Madrid (Government of Madrid)
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi
(Government of the Autonomous Community of the Basque Country)
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
Diputación Foral de Alava (Regional Council of Alava)
Ayuntamiento de Madrid (City Council of Madrid)
Ayuntamiento de Barcelona (City Council of Barcelona)
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
Cabildo Insular de Tenerife (Island Council of Tenerife)
Instituto de Crédito Oficial (Public Credit Institution)
Instituto Catalán de Finanzas (Finance Institution of Catalonia)
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

GREECE Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications
Organisation)
Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

FRANCE La Caisse d'amortissement de la dette sociale (CADES) (Social Debt
Redemption Fund)
L'Agence française de développement (AFD) (French Development
Agency)
Réseau Ferré de France (RFF) (French Rail Network)
Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals
Public Assistance)
Charbonnages de France (CDF) (French Coal Board)

Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

ITALY Regions
 Provinces
 Municipalities
 Cassa Depositi e Prestiti (Deposits and Loans Fund)

PORTUGAL Região Autónoma da Madeira (Autonomous Region of Madeira)
 Região Autónoma dos Açores (Autonomous Region of Azores)
 Municipalities

B. International entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank / IBRD / IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Social. Development Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

C. Entities in third countries:

Those entities that meet the following criteria -

1. the entity is clearly considered to be a public entity according to the national criteria,
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government,
3. such public entity is a large and regular issuer of debt,
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.