

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH FINLAND

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Revision of the Double Taxation Arrangements made with Finland”, dated 11 August 2020, they are of the opinion:-

1. To declare that:
  - (a) The “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation on Individuals”; the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation with Respect to Enterprises Operating Ships or Aircraft in International Traffic”; and the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland on the Access to Mutual Agreement Procedures in Connection with the Adjustment of Profits of Associated Enterprises”, all signed by Guernsey on 24 April 2020, have been made with the government of another territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of those territories; and
  - (b) it is expedient that the double taxation agreements that Guernsey has with Finland, signed on 28 October 2008, as so amended, should have effect, with the consequence that those Agreements shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH FINLAND

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

11 August, 2020

Dear Sir

**1. Executive Summary**

1.1 On 24 April 2020, Guernsey entered into four new tax agreements with Finland:

- (i) the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation on Individuals”;
- (ii) the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation with Respect to Enterprises Operating Ships or Aircraft in International Traffic”;
- (iii) the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland on the Access to Mutual Agreement Procedures in Connection with the Adjustment of Profits of Associated Enterprises”; and
- (iv) the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Exchange of Information Relating to Tax Matters”.

(The first three of the agreements detailed above (referred to hereafter as the “DTA Protocols”) are the subject of this policy letter. The “Protocol Amending the Agreement between the States of Guernsey and the Republic

of Finland for the Exchange of Information Relating to Tax Matters” requires approval by the States of an Ordinance, which is being dealt with separately.)

- 1.2 The principal purpose of a double taxation agreement (“DTA”) is for two governments to agree procedures for the prevention of double taxation and tax avoidance and evasion, with respect to their domestic taxes.
- 1.3 In recent years, the Organisation for Economic Development & Co-operation (“OECD”) has been developing the Base Erosion & Profit Shifting (“BEPS”) initiative which is aimed at combatting tax avoidance. One outcome of the BEPS initiative was the creation of a multilateral instrument which committed jurisdictions could sign. Once the provisions of the multilateral instrument are adopted into domestic legislation by a signatory, all DTAs affected by the multilateral instrument are revised accordingly, and are then compliant with BEPS minimum standards.
- 1.4 Whilst Guernsey signed the multilateral instrument, in 2017, not all of Guernsey’s pre-existing DTAs (including those with Finland) are covered by it. If those DTAs not covered by the multilateral instrument are to meet BEPS minimum standards, to which Guernsey is committed, they have to be amended by bilateral agreement.
- 1.5 The new Protocols represent the outcome of such bilateral agreements held with Finland. The original DTAs (that the new Protocols will amend) were signed with Finland on 28 October 2008.
- 1.6 The purpose of this policy letter is to seek States approval, in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended (“the Income Tax Law”) for the provisions of the three new DTA Protocols to be given domestic effect.

## **2. Background**

- 2.1. Section 172(1) of the Income Tax Law provides:

“If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment.”.

Section (1AA) provides that:

“The arrangements that may be specified in a Resolution under this section include (without prejudice to subsection (1A) –

- (a) arrangements amending, modifying or extending –
  - (i) double taxation arrangements entered into by or otherwise binding upon Guernsey, or
  - (ii) any arrangements of a description set out in paragraph (b) for the time being specified in a Resolution under this section, including, without limitation, the arrangements effected by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done at Paris on the 24th November, 2016, and
- (b) other arrangements containing provisions that relate to, or are consequential, incidental, supplementary or ancillary to, such double taxation arrangements or double taxation matters.”.

Section (1A) further provides that:

“For the avoidance of doubt, arrangements made with the government of another territory and specified in a Resolution under this section may, without limitation, and provided that the main purpose or one of the main purposes of the arrangements is that they are made with a view to affording relief from double taxation, make provision in respect of the following matters –

- (a) the apportionment of taxing rights,
- (b) variations in the rates of tax, and methods of computing a person's liability to tax, in relation to particular sources of income,
- (c) the exemption from tax of particular sources of income,
- (d) other methods of affording relief from double taxation, in addition to those provided for by section 173 (tax credits), and
- (e) consequential, incidental, supplementary and transitional matters.”.

Section 172(1) of the Income Tax Law would therefore be the mechanism for subsequent amendments to existing DTAs.

- 2.2 Guernsey currently has fully comprehensive DTAs with 14 jurisdictions. Guernsey also has “partial” DTAs (dealing with such issues as personal tax matters; shipping and aircraft and mutual agreement procedures) with 12 jurisdictions, including three agreements with Finland.
- 2.3 In recent years, in response to a request from the G20, the OECD has been working on the Base Erosion and Profit Shifting (“BEPS”) initiative.
- 2.4 BEPS is based on the premise that, in an increasingly interconnected world, national tax laws, many of which have their origins over 100 years ago, have not always kept pace with global corporations, fluid movement of capital, and, most recently, the rise of the digital economy, leaving gaps and mismatches that can be exploited, in some cases to generate double non-taxation, which can undermine the fairness and integrity of tax systems.
- 2.5 Part of the BEPS outcomes involved designing a multilateral instrument to permit the current existing global framework of DTAs (numbering over 3,000) to be revised to meet BEPS objectives, as the alternative would be extensive bilateral negotiations, which could take decades to achieve.
- 2.6 Guernsey was amongst the first signatories of the multilateral instrument, in June 2017.
- 2.7 None of the “partial” DTAs entered into by Guernsey (see 2.2. above) were listed under the multilateral instrument, either by Guernsey or the partner jurisdiction. This was because they dealt with only limited aspects of what is normally covered by a DTA, and application of the full suite of provisions of the multilateral instrument to the partial DTAs was not considered appropriate.
- 2.8 Contact was made with the relevant jurisdictions, offering to negotiate amendments to the partial DTAs, on a bilateral basis, to make them compliant with BEPS principles. Finland (amongst others) accepted the proposal.
- 2.9 As a consequence, the new DTA Protocols contain revisions to the three original agreements with Finland as follows:
  - (a) for the preamble text to be modified to refer to the parties intending to eliminate double taxation with respect to the taxes covered by the agreements without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreements for the indirect benefit of residents of third jurisdictions).

- (b) a provision is added to specify that a benefit under the agreements shall not be granted in respect of an item of income, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.
- (c) making it explicit that, where a person considers that the actions of one or both of the parties to the agreement result, or will result, for that person in taxation not in accordance with the provisions of the agreement, he may, irrespective of the remedies provided by the domestic law of the parties, present the case to the competent authority of either party.
- (d) the definitions of “competent authority” and “Guernsey” have been revised, to reflect changes that have occurred since the original agreements were signed.

2.10 Copies of the new DTA Protocols are attached.

### **3. Recommendations**

3.1. The Policy & Resources Committee is pleased to recommend that the States should declare that:

- (a) the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation on Individuals”; the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation with Respect to Enterprises Operating Ships or Aircraft in International Traffic”; and the “Protocol Amending the Agreement between the States of Guernsey and the Republic of Finland on the Access to Mutual Agreement Procedures in Connection with the Adjustment of Profits of Associated Enterprises”, all signed by Guernsey on 24 April 2020, have been made with the government of another territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of those territories; and
- (b) it is expedient that the double taxation agreements that Guernsey has with Finland, signed on 28 October 2008, as so amended, should have effect, with

the consequence that those Agreements shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

**4. Compliance with Rule 4**

- 4.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2. In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 4.3. In accordance with Rule 4(3), there are no Propositions which request the States to approve funding.
- 4.4. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions attached to this Policy letter have the unanimous support of the Committee.
- 4.5. In accordance with Rule 4(5), the Propositions relate to the duties of the Committee in raising and collecting taxes and revenues and executing and requesting the extension of international agreements to which the Island is invited to acquiesce.

Yours faithfully

G A St Pier  
President

L Trott  
Vice-President

A Brouard  
J Le Tocq  
J Stephens

**PROTOCOL**  
**Amending the Agreement between the States of Guernsey**  
**and the Republic of Finland**  
**for the Avoidance of Double Taxation on Individuals;**  
**signed on 28th October, 2008**

The States of Guernsey and the Government of the Republic of Finland ("the Parties"),

Desiring to amend the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation on Individuals ("the Agreement"), signed on 28th October, 2008

Have agreed as follows:

## ARTICLE I

The Preamble to the Agreement shall be modified to include the following text immediately after the existing first paragraph:

"Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),"

## ARTICLE 2

In Article 3 (General definitions):

(i) sub-paragraph a) of paragraph 1 shall be deleted and replaced by the following:

"a) the term "Guernsey" means the States of Guernsey and, when used in the 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;"

(ii) point i) of sub-paragraph c) of paragraph 1 shall be deleted and replaced by the following:

"ii) in the case of Guernsey, the Director of the Revenue Service or her delegate;"

## ARTICLE 3

The first sentence of the first paragraph of Article 11 of the Agreement (Mutual Agreement Procedure) shall be modified as follows:

"Where an individual considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party."

## ARTICLE 4

Immediately after Article 11 of the Agreement (Mutual Agreement Procedure), the following shall be added, as Article 11A:

"Entitlement to Benefits

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement."

#### ARTICLE 5

1. This Protocol shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with.

2. The Protocol shall have effect:

a) in Guernsey:

in respect of Guernsey tax, on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following that in which this Protocol enters into force;

b) in Finland:

in respect of Finnish tax, on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following that in which this Protocol enters into force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, and  
at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, in duplicate in the  
English language.

FOR THE STATES  
OF GUERNSEY:

FOR THE GOVERNMENT  
OF THE REPUBLIC OF FINLAND:

**PROTOCOL**  
**Amending the Agreement between the States of Guernsey**  
**and the Republic of Finland**  
**for the Avoidance of Double Taxation with Respect to**  
**Enterprises Operating Ships or Aircraft in International Traffic,**  
**signed on 28th October, 2008**

The States of Guernsey and the Government of the Republic of Finland ("the Parties"),

Desiring to amend the Agreement between the States of Guernsey and the Republic of Finland for the Avoidance of Double Taxation with Respect to Enterprises Operating Ships or Aircraft in International Traffic ("the Agreement), signed on 28th October, 2008

Have agreed as follows:

## ARTICLE I

The Preamble to the Agreement shall be modified to include the following text immediately after the existing first paragraph:

"Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),"

## ARTICLE 2

In Article 1 (Definitions):

(i) sub-paragraph b) of paragraph 1 shall be deleted and replaced by the following:

“b) the term "Guernsey" means the States of Guernsey and, when used in the 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;”

(ii) point ii) of sub-paragraph i) of paragraph 1 shall be deleted and replaced by the following:

“ii) in the case of Guernsey, the Director of the Revenue Service or her delegate;”

## ARTICLE 3

The first sentence of the first paragraph of Article 3 of the Agreement (Mutual Agreement Procedure) shall be modified as follows:

" Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party."

## ARTICLE 4

Immediately after Article 3 of the Agreement (Mutual Agreement Procedure) the following shall be added, as Article 3A:

"Entitlement to Benefits

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement."

#### ARTICLE 5

This Protocol shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with. The Protocol shall have effect on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following that in which this Protocol enters into force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, and  
at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, in duplicate in the  
English language.

FOR THE STATES  
OF GUERNSEY:

FOR THE GOVERNMENT OF THE  
REPUBLIC OF FINLAND:

**PROTOCOL**  
**Amending the Agreement between the States of Guernsey**  
**and the Republic of Finland on the Access to Mutual Agreement Procedures**  
**in Connection with the Adjustment of Profits of Associated Enterprises,**  
**signed on 28th October, 2008**

The States of Guernsey and the Government of the Republic of Finland ("the Parties"),

Desiring to amend the Agreement between the States of Guernsey and the Republic of Finland on the Access to Mutual Agreement Procedures in Connection with the Adjustment of Profits of Associated Enterprises ("the Agreement"), signed on 28th October, 2008,

Have agreed as follows:

## ARTICLE I

The Preamble to the Agreement shall be modified to include the following text immediately after the existing first paragraph:

"Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),"

## ARTICLE 2

In Article 2 (Definitions):

(i) sub-paragraph b) of paragraph 1 shall be deleted and replaced by the following:

“b) the term "Guernsey" means the States of Guernsey and, when used in the 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;"

(ii) point ii) of sub-paragraph c) of paragraph 1 shall be deleted and replaced by the following:

“ii) in the case of Guernsey, the Director of the Revenue Service or her delegate;”

## ARTICLE 3

The first paragraph of Article 5 of the Agreement (Mutual Agreement Procedures) shall be modified as follows:

"Where an enterprise considers that, in any case to which this Agreement applies, the actions of one or both of the Parties result or will result for it in double taxation, it may, irrespective of the remedies provided by the domestic law of those Parties, present its case to the competent authority of either Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement."

## ARTICLE 4

Immediately after Article 5 of the Agreement (Mutual Agreement Procedure) the following shall be added, as Article 5A:

"Entitlement to Benefits

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement."

ARTICLE 5

This Protocol shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with. The Protocol shall have effect on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following that in which this Protocol enters into force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, and  
at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, in duplicate in the English  
language.

FOR THE STATES  
OF GUERNSEY:

FOR THE GOVERNMENT OF THE  
REPUBLIC OF FINLAND: