

9 February 2009

GUERNSEY SIGNS

NEW TAX INFORMATION EXCHANGE AGREEMENT WITH THE UK

A new tax information exchange agreement (“TIEA”) between the Governments of the United Kingdom and Guernsey was signed in London on 20 January 2009. This is the fourth comprehensive TIEA signed by the UK and the text broadly follows the OECD model agreement on exchange of information on tax matters.

Guernsey has previously signed TIEAs with the United States, The Netherlands, Denmark, The Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden.

In proposing the agreement to the States of Guernsey, the responsible UK Minister noted that the UK and Guernsey recognise that they share a common commitment to comply with international standards of anti-money laundering and counter-terrorist financing legislation and financial regulation, and to participate in international efforts to combat financial and other crimes including fiscal crime.

The UK recognises that Guernsey is committed to international cooperation and information exchange on tax matters and recognises the States of Guernsey’s commitment to a “good neighbour” policy.

The agreement shall become effective when the internal procedures of both Governments are concluded and shall take effect for criminal tax matters from that date and for all other matters also 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. Thus, the agreement is not retrospective except in relation to ongoing criminal tax investigations.

By entering into these agreements, with more to follow, Guernsey is demonstrating to the world that it wishes to embrace transparency and be seen to be internally regulated to the highest standards thereby maintaining Guernsey in the first tier of offshore financial centres.

This development is therefore seen as an opportunity for Guernsey as an offshore financial centre rather than a threat. Any UK tax planning arrangements designed to avoid or defer UK tax that are administered in Guernsey should expect to be fully disclosed.

However, it is important to recognise that these agreements can only operate in relation to specific detailed enquiries being undertaken by the tax authorities of each jurisdiction and the conditions in the agreements specify the level of detail required to be provided by one tax authority to the other in seeking information. The TIEA could not therefore be used as a “fishing expedition”.

Various commentators on the TIEA have expressed differing views on the extent of the information gathering powers it provides to the tax authorities. It is anticipated that any concerns about these procedural issues will become clearer in due course and certainly prior to the effective commencement date of the TIEA.

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