

Explanatory Note on the Taxation (Agreements with European Member States) (Suspension of Regulations) (Jersey) Order 2016

1. In 2004 Jersey voluntarily entered into agreements with Member States of the EU on the taxation of savings income. The agreements mirrored the EU Directive on the taxation of savings income in the form of interest payments (Directive 2003/48/EC). The agreements were brought into effect through the Taxation (Agreements with European Member States) (Jersey) Regulations 2005
2. On 9 December 2014, the European Council adopted Directive 2014/107/EU that extended automatic exchange of information to a full range of income in accordance with the Global Standard released by the OECD Council in July 2014 and ensured a coherent, consistent and comprehensive Union wide approach to the automatic exchange of financial account information in the Internal Market.
3. When adopting Directive 2014/107/EU the European Council invited the European Commission to present a proposal to repeal Directive 2003/48/EC and to coordinate the repealing of that Directive with the date of application set forth in Article 2 of Directive 2014/107/EU with due regard to the derogation provided therein for Austria.. Thereby, Directive 2003/48/EC would continue to apply to Austria during an additional one year period.
4. Directive 2003/48/EC has been repealed with effect from 1 January 2016. The repealing Directive 2015/2060/EU is attached as an appendix to this report.
5. Article 17(3) of the Agreements between Jersey and the Member States provides that the application of the Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either

temporarily or permanently in accordance with European Community law.

6. The notification of the suspension of the Agreements has been executed through an exchange of letters with each of the Member States. A copy of the letter sent is attached as an appendix to this report. This letter also provides for the termination of the Agreements with effect from a year's time or until the obligations of the Agreement have been fulfilled whichever is later.
7. Regulation 3 (2) of the Taxation (Agreement with European Union Member States) (Jersey) Regulations 2005 provides that where notice is given of suspension of all or part of an agreement the Minister shall, by Order, suspend the operation of these Regulations to the extent that they implement so much of the agreement as is suspended.
8. However notwithstanding the repeal, information gathered by paying agents and by Member States until the date of the repeal must be processed and transferred as originally envisaged and obligations which arose prior to that date must be met. Thus an Order is required that provides for the suspension of the Agreements but which also ensures that the obligations continue to be met where appropriate to do so. Thus provision is made in the Taxation (Agreements with European Union Member States) (Suspension of Regulations) (Jersey) Order 2016 - a copy of which is attached -for the retention of the obligations to report in 2016 the information required under the Agreements in respect of reportable accounts in 2015 while removing the requirement to report information on accounts held in 2016 which will be reported separately under the provisions of the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015.
9. The repealing Directive 2015/2060/EU provides for the repeal to have effect for Austria a year later than for the other 27 Member States. As a result there would be a need for Jersey financial institutions to continue to maintain the reporting requirements under the Regulations

implementing the Agreements on the Taxation of Savings Income in respect of reportable accounts held in 2016 solely for Austria. To avoid this burden the agreement of the Austrian authorities has been sought that, notwithstanding the special provisions of the repealing Directive, the obligations of the Agreement between Jersey and Austria would be waived so that the Agreement can be suspended in common with the Agreements for the other 27 Member States. Financial institutions will be advised of the confirmation of this arrangement as soon as the formal agreement of the Austrian authorities has been received.

10. Any queries concerning this matter can be addressed to the Adviser – International Affairs in the Chief Minister’s Dept (tel: 440414; email: c.powell@gov.je)

Chief Minister’s Dept
January 2016

COUNCIL DIRECTIVE (EU) 2015/2060

of 10 November 2015

repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Building on the consensus reached at the European Council of 20 June 2000 that relevant information should be exchanged for tax purposes on as wide a basis as possible, Council Directive 2003/48/EC ⁽¹⁾ has been applied in the Member States since 1 July 2005 with the aim of enabling savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State, thus eliminating distortions in capital movements between Member States, which would be incompatible with the internal market.
- (2) The worldwide aspect of the challenges posed by cross-border tax fraud and evasion is a major concern at a global level and within the Union. Unreported and untaxed income considerably reduces national tax revenues. On 22 May 2013, the European Council welcomed ongoing efforts made in the G8, G20 and the Organisation for Economic Cooperation and Development (OECD) to develop a global standard.

- (3) Council Directive 2011/16/EU ⁽²⁾ provides for the mandatory automatic exchange of certain information between Member States. It also provides for the step-by-step extension of its scope into new categories of income and capital, for the purpose of combating cross-border tax fraud and evasion.
- (4) On 9 December 2014, the Council adopted Directive 2014/107/EU ⁽³⁾ which amended Directive 2011/16/EU to extend the mandatory automatic exchange of information to a wider range of income in accordance with the Global Standard released by the OECD Council in July 2014 and ensured a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of financial account information in the internal market.
- (5) Directive 2014/107/EU is generally broader in scope than Directive 2003/48/EC and provides that in cases of overlap of scope, Directive 2014/107/EU is to prevail. There are still residual cases in which only Directive 2003/48/EC applies. Those residual cases are the consequence of slight differences in approach between the two Directives and of different specific exemptions. In those limited instances, the application of Directive 2003/48/EC would result in dual reporting standards within the Union. The minor benefits of retaining such dual reporting would be outweighed by the costs.
- (6) On 21 March 2014, the European Council invited the Council to ensure that relevant Union law is fully aligned with the new single Global Standard of automatic exchange of information developed by the OECD. In addition, when adopting Directive 2014/107/EU, the Council invited the Commission to present a proposal to repeal Directive 2003/48/EC and to coordinate the repeal of that Directive with the date of application set down in Directive 2014/107/EU, having regard to the derogation provided therein for Austria. Therefore, Directive 2003/48/EC should continue to apply to Austria for an additional one-year period. In the light of the position taken by the Council, the repeal of Directive 2003/48/EC is needed in order to avoid dual reporting obligations and to save costs both for tax authorities and economic operators.
- (7) Under Council Directive 2014/48/EU ⁽⁴⁾, Member States are to adopt and publish, by 1 January 2016, the laws, regulations and administrative

provisions necessary to comply with that Directive. Member States are to apply those provisions as of 1 January 2017. With the repeal of Directive 2003/48/EC, Directive 2014/48/EU would no longer have to be transposed.

- (8) To ensure the seamless continuation of automatic reporting of financial account information, the repeal of Directive 2003/48/EC should apply on the same day as the date of application of the measures set down in Directive 2014/107/EU.
- (9) Notwithstanding the repeal of Directive 2003/48/EC, information gathered by paying agents, economic operators and by Member States before the date of the repeal should be processed and transferred as originally envisaged, and obligations arising before that date should be met.
- (10) In relation to withholding tax levied under the transitional period referred to in Directive 2003/48/EC, in order to protect the acquired rights of beneficial owners, Member States should continue to give credit or refunds as originally envisaged and should issue certificates on request to enable beneficial owners to ensure that withholding tax is not levied.
- (11) Account should be taken of the fact that, in view of structural differences, Austria has been allowed a derogation under Directive 2014/107/EU which allows it to delay the application of that Directive by one year until 1 January 2017. However, on the adoption of Directive 2014/107/EU, Austria announced that it would not make full use of the derogation. Instead, Austria is to exchange information by September 2017, albeit on a limited set of accounts, while retaining the derogation in other cases. Therefore, specific provision should be made to ensure that Austria, and the paying agents and economic operators established therein, continue to apply the provisions of Directive 2003/48/EC during the period of derogation, except for those accounts to which Directive 2014/107/EU applies.
- (12) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to the

protection of personal data, and nothing in this Directive shall reduce or eliminate those rights.

(13) Since the objective of this Directive, namely the repeal of Directive 2003/48/EC with the temporary exceptions necessary to protect the acquired rights and to take account of the derogation allowed to Austria under Directive 2014/107/EU, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(14) Directive 2003/48/EC should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Subject to paragraphs 2 and 3, Directive 2003/48/EC is repealed with effect from 1 January 2016.
2. Without prejudice to paragraph 3, the following obligations of Directive 2003/48/EC, as amended by Council Directive 2006/98/EC ⁽⁵⁾, shall continue to apply:

- (a) the obligations of Member States and economic operators established therein under the second subparagraph of Article 4(2) of Directive 2003/48/EC shall continue to apply until 5 October 2016 or until those obligations have been fulfilled;
- (b) the obligations of paying agents under Article 8 of Directive 2003/48/EC and of Member States of paying agents under Article 9 of Directive 2003/48/EC shall continue to apply until 5 October 2016 or until those obligations have been fulfilled;
- (c) the obligations of Member States of residence for tax purposes of the beneficial owners under Article 13(2) of Directive 2003/48/EC shall continue to apply until 31 December 2016;
- (d) the obligations of Member States of residence for tax purposes of the beneficial owners under Article 14 of Directive

2003/48/EC, with regard to withholding tax levied during 2016 and previous years, shall continue to apply until those obligations have been fulfilled.

3. Directive 2003/48/EC, as amended by Directive 2006/98/EC, shall continue to apply with regard to Austria until 31 December 2016, with the exception of the following obligations:

- (a) the obligations of Austria and the underlying obligations of the paying agents and economic operators established therein under Article 12 of Directive 2003/48/EC, which shall continue to apply until 30 June 2017 or until those obligations have been fulfilled;
- (b) the obligations of Austria and economic operators established therein under the second subparagraph of Article 4(2) of Directive 2003/48/EC, which shall continue to apply until 30 June 2017 or until those obligations have been fulfilled;
- (c) any obligations of Austria and the underlying obligations of the paying agents established therein arising directly or indirectly from the procedures referred to in Article 13 of Directive 2003/48/EC, which shall continue to apply until 30 June 2017 or until those obligations have been fulfilled.

Notwithstanding the first subparagraph, Directive 2003/48/EC, as amended by Directive 2006/98/EC, shall not apply after 1 October 2016 to interest payments with regard to accounts for which the reporting and due diligence obligations included in Annexes I and II to Directive 2011/16/EU have been fulfilled and for which Austria has communicated by automatic exchange the information referred to in Article 8(3a) of Directive 2011/16/EU within the deadline laid down in point (b) of Article 8(6) of Directive 2011/16/EU.

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.
Done at Brussels, 10 November 2015.

For the Council
The President
P. GRAMEGNA

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- (¹) Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ([OJ L 157, 26.6.2003, p. 38](#)).
- (²) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ([OJ L 64, 11.3.2011, p. 1](#)).
- (³) Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation ([OJ L 359, 16.12.2014, p. 1](#)).
- (⁴) Council Directive 2014/48/EU of 24 March 2014 amending Directive 2003/48/EC on taxation of savings income in the form of interest payments ([OJ L 111, 15.4.2014, p. 50](#)).
- (⁵) Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania ([OJ L 363, 20.12.2006, p. 129](#)).
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Appendix 2

Minister for External Relations
Ministry of External Relations
Cyril Le Marquand House
St Helier,
Jersey, JE4 8QT

A. Letter from Jersey

Sir,

In view of the repeal of the EU Savings Directive (2003/48/EC), I have the honour to inform you that Jersey intends to reflect this repeal by suspending the Bilateral Savings Agreement

that we entered into with the [Member State] on 2004, ("the Agreement") in accordance with Article 17 thereof, subject to the same timetable and transitional provisions as contained in Article 1(1) of the repealing Directive.

I would be grateful if you could please confirm that the [Member State] will similarly give effect to the repeal of the EU Savings Directive in accordance with the Agreement.

I have the further honour to inform you that this letter is also a formal notification of the intention to terminate the Agreement in accordance with Article 16 thereof, with effect from a year's time or until the obligations of the Agreement have been fulfilled whichever is the later.

As you know Jersey committed in early 2013 to early adoption of the new global standard for automatic exchange of information (the Common Reporting Standard, "the CRS"). In line with the commitments we made as part of the early adopters group, I can confirm that legislation bringing the CRS into our domestic law has been laid before our Parliament for approval on the 1st December 2015 and, in due course, we will be so notifying the Coordinating Body Secretariat under section 7 of the Multilateral Competent Authority Agreement with respect to being able to commence the automatic exchange of information with the [Member State] with first exchange in 2017.

Please accept, Sir, the assurance of my highest consideration,

For Jersey

Minister for External Relations

Done at St Helier, on 13 November 2015

