

Agreement

between

the Government of Jersey

and

the Government of

the Federal Republic of Germany

on Co-operation in Tax Matters

and the Avoidance of Double Taxation with respect to certain Items of Income

The Government of Jersey

and

the Government of the Federal Republic of Germany,

Desiring to promote their mutual economic relations by removing fiscal obstacles and to strengthen their co-operation in tax matters,

Have agreed as follows:

Article 1

Persons covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income.
2. The existing taxes to which this Agreement shall apply are in particular:
 - a) in the case of the Federal Republic of Germany:

the income tax (Einkommensteuer),
the corporation tax (Körperschaftsteuer) and
the trade tax (Gewerbesteuer),

including the supplements levied thereon;

b) in the case of Jersey:

the income tax.

3. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

Income Covered

This Agreement shall apply to items of income dealt with in Articles 6 to 8.

Article 4

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) “Contracting Party” and “the other Contracting Party” mean the Government of Jersey or the Government of the Federal Republic of Germany, as the context requires;
- b) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
- c) “Jersey” when used in a geographical sense, means the Bailiwick of Jersey, including its territorial sea;
- d) “competent authority” means:

- (i) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power,
- (ii) in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
- e) "person" includes an individual, a company and any other body of persons;
- f) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) "enterprise" applies to the carrying on of any business;
- h) "business" includes the performance of professional services and of other activities of an independent character;
- i) "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party or an enterprise carried on by a resident of the other Contracting Party.

2. As regards the application of the Agreement at any time by a Contracting Party any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Residence

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his

domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the territory of that Contracting Party in respect only of income from sources in that Contracting Party or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
- b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;
- c) if he has an habitual abode in both Contracting Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

Article 6

Pensions and Annuities

1. Pensions and other similar remuneration in consideration of past employment or annuities paid to a resident of a Contracting Party shall be taxable only by that Contracting Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other remuneration paid under the social security legislation of a Contracting Party shall be taxable only by that Contracting Party.

3. Any pension paid by, or out of funds created by, a Contracting Party, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that Contracting Party to an individual in respect of services rendered to that Contracting Party, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only by that Contracting Party.

4. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting Parties or a political subdivision thereof to a person resident in the other Contracting Party as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, vaccination or a similar event shall be taxable only by the first-mentioned Contracting Party.

5. The term “annuities” means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

Article 7

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed by that Contracting Party, provided that such payments arise from sources outside that Contracting Party.

Article 8

Associated Enterprises

1. Where:

- a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party intends to adjust the profits of an enterprise in accordance with the principles set out in paragraph 1, it shall inform the enterprise of the intended action in good time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Contracting Party. However, the right of the Contracting Party providing such information to make the proposed adjustment shall not be thereby affected.

Article 9

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the law of the Contracting Party concerned, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years of the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement

with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the law of the Contracting Parties.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

4. The competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 8 one of the enterprises concerned is liable to a serious penalty. In addition, the competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure if the enterprise has not fulfilled the documentation and/or information requirements of the adjusting Contracting Party before the assessment in which the adjustment is incorporated was finalized.

5. The Contracting Parties may also agree on other forms of dispute resolution including arbitration.

6. The competent authorities of the Contracting Parties may modify or supplement the above rules and procedures as necessary to more effectively implement their intent.

7. If, in carrying out the provisions of this Article, personal data shall be exchanged, the provisions of paragraph 2 of the Protocol to the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information relating to Tax Matters shall apply.

Article 10

Entry into Force

1. This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of

this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. The provisions of this Agreement shall have effect

- a) in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force,
- b) in respect of proceedings referred to in paragraph 1 of Article 9 which are initiated after its entry into force.

3. Notwithstanding paragraph 1 and paragraph 2 of this Article, the Agreement shall only enter into force when the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information relating to Tax Matters shall have effect.

Article 11

Termination

1. This Agreement is concluded for a period of five years. Six months before the expiry of that period, the Contracting Parties will meet to decide on the extension of this Agreement and any other relevant measure.

2. Notwithstanding paragraph 1, this Agreement shall be terminated, without need of notice of termination, on the date of termination of the Agreement of 4 July 2008 between the Government of Jersey and the Government of the Federal Republic of Germany for the Exchange of Information in Tax Matters.

Done at Berlin in duplicate this fourth day of July, 2008, in the English and German languages, each text being equally authentic.

For the Government
of Jersey

For the Government
of the Federal Republic of Germany