

WiltonGroup

**Exchange
of
Information**

EXCHANGE OF INFORMATION

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Introduction

Exchange of information has recently become an emerging issue. Exchange of information provisions allow the competent authorities of contacting countries to obtain the information necessary for correct assessment and application of tax in the requesting state. It enables the competent authorities to combat tax avoidance and evasion and other fiscal crimes, and therefore to ensure a more efficient and competitive international business environment. Exchange of information is important in investigations of other criminal matters such as money laundering, drug trafficking, and combating terrorism.

Majority of countries have a number of international agreements, legal mutual assistance directives and domestic legislations which provide for exchange of information. The information is either passed through bilateral agreements or through criminal courts. The information is usually provided by the competent authorities on request, spontaneously or automatically, and is protected by confidentiality provisions.

International organisations, such as OECD and EU, have recently shown an interest in the lack of transparency and efficiency regarding exchange of information between the member countries. They are especially concerned with uncooperative behaviour of the 'tax havens', which are said to be promoting unfair competition. OECD Harmful Tax Initiative and EU Savings Income and Tax Directive aim to improve exchange of information between the states by persuading the countries to commit to implementation of efficiency and transparency principles of exchange of information (OECD Harmful Tax Initiative) by 1 January 2004 for criminal matters, or by 1 January 2006 for civil investigations. The EU Savings Income and Tax Directive offers a choice for the member countries, where they can choose either to exchange information about the EU residents' savings income automatically with the other member countries starting 1 January 2005, or to implement withholding tax.

About the Project

The project looks at legal provisions for exchange of information made by different jurisdictions, including The Bahamas, The British Virgin Islands, The Isle of Man, Ireland, Jersey and the UK.

Each section starts by listing the competent authorities who have the power to exchange information with the foreign competent authorities, and stating the functions and objectives of each authority.

The list of agreements/legislation, which allow for exchange of information between the countries is provided. Each legislation is then looked at in greater detail including description of the sort of information that can be requested, the circumstances in which the information can be requested and exchanged, and any rules that may apply to the process of exchange of information.

The general powers of the competent authorities to obtain information are stated after the analysis of relevant legislation. Those are guided by a domestic legislation, and are usually linked to the functions of the competent authority.

The section is finished off with a description of recent events, which may have concerned new legislation or developments linked to exchange of information in the jurisdiction. The list of sources of information is supplied at the very end of the section.

Exchange of information in the Bahamas

Exchangers of information

- Attorney-General

The Cabinet of Ministers of the Bahamas comprises of 16 ministers including the Attorney General. The power of the Attorney General, under the Constitution of the Commonwealth of the Bahamas, is to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of the Bahamas; to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

- The Financial Intelligence Unit

The Financial Intelligence Unit is a member of the Egmont Group. This is an international organisation of Financial Intelligence Units from fifty-four countries that provides a forum to improve support for the respective national anti-money laundering programmes of its members. The FIU acts as the agency responsible for receiving, analysing, obtaining and disseminating information, which relates or may relate to the offences specified in the Proceeds of Crime Act, 2000.

The members of the Egmont Group are: Andorra, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Bermuda, Bolivia, Brazil, BVI, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Greece, Guernsey, Hong Kong, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Marshall Islands, Mexico, Monaco, Netherlands, Netherlands Antilles, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, the UK, US, Vanuatu, Venezuela.

Exchange of information is provided for under

- Mutual Legal Assistance Treaties
- Exchange of Tax Information Agreement
- International Co-Operation Act

The Bahamas don't levy direct taxes; therefore it has no double tax treaties with other countries. Majority of exchange of information agreements exclude fiscal information because tax evasion is not a crime in the Bahamas.

Mutual Legal Assistance Treaties

The Bahamas have 3 Mutual Legal Assistance Treaties: The Bahamas/ US, 1987; The Bahamas/ Canada, 1988; and The Bahamas/UK, 1988. The treaties are concerned with the investigation and prosecution of all criminal matters (excluding tax evasion) which may occur in each party's territory, and they all include provisions for exchange of information between the countries. The request for information must be concerned with a person who is currently under a criminal

investigation in the requesting country. The Attorney General must approve and authorize request for information, which gives the authorized officer the power to obtain any information he considers to be relevant to the investigation.

The treaties contain provisions for keeping received information confidential: a record sent to the Attorney General by a foreign state in accordance with a request made by the Attorney General is privileged and no person shall disclose to anyone the record or its contents.

Exchange of tax information agreement

In January 2002, the Bahamas signed an information exchange agreement with the US in order to allow both countries to pursue tax evaders and money launderers more effectively.

The main commitments include revealing when required beneficial ownership information to the tax authorities in the case of companies, partnership and trusts; maintaining audited accounts to internationally accepted standards; and allowing access to banking data for the Bahamian authorities in respect of the agreement rules.

There are strict safeguards – formal requests must be made on an individual case basis relating to a matter already under investigation in the subject’s jurisdiction. All available means must first have been used to obtain the information in the requesting country and information may not be communicated to third parties.

The Bahamas will provide the US Treasury with information on criminal and civil tax matters involving its citizens from January 1, 2004 and January 1, 2006 respectively.

International Co-operation Act

The Criminal Justice (International Co-operation) Act, 2000 authorises exchange of evidence and information. The competent foreign authority may apply for a request for assistance in obtaining evidence in the Bahamas in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on in that country. The Attorney General must be satisfied with the request before he nominates a court in the Bahamas to receive the documents to which the request relates.

The information obtained as the result of the request must be kept confidential and not be disclosed to third parties. It can only be used for the purposes it was requested for.

Other legislation that provide for exchange of information in cases concerning criminal conduct include:

- Dangerous Drugs Act 2000
- Evidence (Proceedings in Other Jurisdictions) Act 2000
- Proceeds of Crime Act 2000
- Extradition Act 1994
- Mutual Legal Assistance (Criminal Matters) Act 1988

Power of the Financial Intelligence Unit to obtain information

The power of the FIU is set out by the Financial Intelligence Unit Act 2000.

The Financial Intelligence Unit has power to compel production of information (except information subject to legal professional privilege), which it considers relevant to fulfil its functions (information such as required to be made pursuant to the Proceeds of Crime Act 2000).

It is an offence to fail or refuse to provide the information requested by the Financial Intelligence Unit. Such offence is punishable on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

The FIU may provide information relating to the commission of an offence specified in the Proceeds of Crime Act 2000 to any Foreign Financial Intelligence Unit.

Proceeds of Crime Act 2000

Criminal conduct means drug trafficking or any other relevant offence including money laundering. If a police officer believes that such an offence has been committed, he may apply to a Stipendiary and Circuit Magistrate for a 'production order' in relation to a particular material or material of a particular description. The obtained material can be used later as evidence in court.

Recent developments

As the response to the OECD Forum on Harmful Tax Practices, the Bahamas committed on the 15 March, 2002 to implement the following measures on a phased basis by 31 December 2005 in cooperation with the OECD

- The Commonwealth of The Bahamas agrees to the effective exchange of information for criminal tax matters which shall become effective for the first tax year after 31 December 2005. Such exchanges shall be achieved under negotiated tax information exchange agreements that require the effective exchange of information in specific tax matters pursuant to a specific request. The agreements will define the tax matters covered and include protection against unauthorized disclosures or unauthorized use of information.
- In a case involving information required for the investigation and prosecution of criminal tax matters, information shall be provided without the requirement that the conduct being investigated must constitute a crime in the Bahamas.
- In the case of information requested in the context of a civil tax matter, the absence of a Bahamian tax interest in the case or in obtaining the information shall not be a bar to the provision of information.
- The Bahamian government will ensure that the information on beneficial ownership of companies, partnerships, other legal entities and on trustees and beneficiaries of trusts established in the Bahamas is available to its tax or regulatory authorities.

Sources of information

Bahamas Financial Services Board: www.bfsb-bahamas.com

Bahamas Compliance Commission: www.bahamas.gov.bs/compliancecommission

International Money Laundering Information Network: www.imolin.org

OECD: www.oecd.org

Exchange of information in the British Virgin Islands

Exchangers of information

- BVI Financial Services Commission

An autonomous regulatory authority responsible for the regulation, supervision and inspection of all financial services in and from within the BVI. Their responsibilities also include promoting public understanding of the financial system and its products, policing the perimeter of regulated activity, reducing financial crime and preventing market abuse.

- Commissioner of Income Tax

Who is responsible for assessment and collection of tax.

Exchange of information is provided for under

- Double taxation agreements
- Exchange of tax information agreement
- International Co-operation Act
- Memoranda of understanding

Double taxation agreements

The BVI has double taxation treaty with the UK which contains an article providing for exchange of information. Also UK's double taxation agreements with Denmark, Japan, Norway, Sweden and Switzerland are extended to BVI. The provisions under the agreements do not extend to International Business Companies.

Exchange of the information provision is limited to exchange of information for the purposes of carrying out the double taxation agreement or domestic tax laws concerned with taxes provided for under the agreement. It is exchanged between the Commissioner of Income Tax and the competent tax authorities of the contracting countries.

The information obtained is to be kept confidential and not to be disclosed to third parties.

Exchange of tax information agreement

On April 3, 2002, the UK has signed tax information exchange agreement with the US with respect to the British Virgin Islands. The agreement provides for exchange of information between competent authorities in the case of the determination, assessment, verification, enforcement and collection of tax claims. It also comes into power when there is an investigation or prosecution of criminal tax evasion.

The information that should be available on request includes the information held by banks, financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and the information regarding the beneficial ownership of companies, partnership and other persons. If the information in possession of the requested party is not sufficient to enable it to comply with the request of information, the requested party shall take all

the relevant information gathering measures to provide the requesting party with the information, notwithstanding that the requested party may not need such information for its own tax purposes.

All information provided and received by the parties shall be kept confidential and not be disclosed to any third party.

The agreement shall have effect for criminal tax evasion beginning on 1 January 2004, and with respect to all other matters for taxable periods commencing from 2006.

International Co-operation Act

Financial Services (International Co-Operation) Act, 2000

The Director of the Financial Services Authority can exercise his powers for the purpose of assisting a foreign authority which has requested assistance in connection with inquiries being carried out by it in respect of any regulatory functions. The powers of the Director include the power to direct any person in writing to furnish him with information with respect to any matter relevant to the inquiries to which the request relates; and to produce any documents relevant to the inquiries to which the request relates.

Where a person fails to comply with the direction within three days from the date of the direction, the Director may apply to a Magistrate for an order requiring the person to comply with the direction.

No information which is supplied by the foreign regulatory authority in connection with a request for assistance, or is obtained by virtue of the exercise of powers under the Act shall (with some exceptions) be disclosed for any purpose by the primary recipient.

Enactments under which assistance may be rendered are

- Mutual Legal Assistance (USA) Act, 1990
- Banks and Trust Companies Act, 1990
- Company Management Act, 1990
- Drug Trafficking Offences Act, 1992
- Criminal Justice (International Co-operation) Act, 1993
- Insurance Act, 1994
- Proceeds of Criminal Conduct Act, 1997
- Mutual Funds Act, 1996

Which provide for access to information relating to criminal investigations, and allow for exchange of information between the contracting countries.

General power of the Commission to request information

As specified under the Financial Services Commission Act 2001, for the purpose of discharging its functions or ensuring compliance with any financial services legislation, the Commission may require a person to provide such information and produce such documents as may be specified in the notice. The information can be then disclosed to a competent authority in an international organisation for the purposes of assisting in the investigation of a criminal activity or assisting a foreign regulatory authority.

Memoranda of Understanding

The BVI have memoranda of understanding with several countries on the matters concerning regulation of financial sector, which provide for limited exchange of information between the regulatory authorities.

Recent Developments

- On 2 April 2002, the BVI committed to the OECD's Harmful Tax Initiatives. The major points of the commitment are
 - The BVI commits to the principles of transparency and effective exchange of information in tax matters.
 - The BVI will put in place legislation in relation to criminal tax matters by 1 January 2004 and for civil tax matters by 1 January 2006. The process will entail negotiation and the adoption of bi-lateral tax information exchange agreements. If the matter is being investigated involves criminal matters, information will be provided regardless of whether the matter constitutes a crime in the BVI.
 - The BVI reserves the right to decline a request for information if such a request would be contrary to public policy or it is information which a country making the request cannot obtain under its own laws for the purposes of enforcement of its own tax laws.
- The BVI commitment will only be progressed as long as all OECD member countries also give their commitment. Therefore, the BVI will be waiting for Switzerland, Luxemburg, Portugal and Belgium to make similar commitments.
- EU Savings Tax Directives attempts to encourage member and non-member countries to commit to exchanging tax information on request from 2006. The BVI has not announced whether it will commit to exchange of information or choose the withholding tax option.

Sources of Information

Financial Services Commission: www.bvifsc.vg

Exchange of information in the Isle of Man

Exchangers of information

- Treasury: Income tax division

The compliance group inside the Income Tax division is responsible for undertaking enquiry cases involving omitted or understated income and other serious non-compliance matters; and dealing with Exchange of Information requests at both a domestic and international level. The power of the Income Division to obtain information for tax assessment purposes is set up under the Income Tax Act 1970.

- Financial Supervision Commission: Enforcement Division

The Commission remains vigilant for breaches of the law relating to investment, banking and CSP activity. Remedial action is taken where appropriate. The Enforcement Division is also the point of contact for co-operation with overseas law enforcement authorities, and is responsible for anti-money laundering policy.

Exchange of information is provided for under

- Double Taxation Agreement
- Exchange of Tax Information Agreement
- International Co-Operation Agreement

Double Taxation Agreement

The Isle of Man has only one double taxation treaty, and that is the treaty with the UK (1955). The treaty contains an article (Article 10) providing for exchange of information as it is necessary for carrying out the Double taxation arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in the relation to the taxes which are the subject of the Arrangement.

It provides for any information exchanged to be treated as secret and not to be disclosed to any persons other than those concerned with the assessment and collection of taxes which are subject of the double taxation agreement.

The information is to be exchanged between the Commissioners of Inland Revenue in the UK and the Assessor of Income Tax in the Island.

Exchange of Tax Information Agreement

On 4 October 2002 the Isle of Man signed a bilateral agreement with the US which follows the standard OECD Exchange of Information Relating to Taxes agreement and provides for the exchange of information by specific case request. The provisions of the agreement will have effect from 1 January 2004 with respect to criminal tax matters relating; and from 1 January 2006 with respect to all other tax matters.

The competent authorities of the Contracting States are to exchange such information as necessary for carrying out the provisions of the Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation is not contrary to the Convention. Any information received is to be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities concerned with the assessment or collection of tax.

If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

Each Contracting Party shall ensure that its competent authorities have the authority to obtain and provide upon request information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity including nominees and trustees.

International Co-operation agreement

The Isle of Man has a number of legislation providing for exchange of information in relation to criminal matters. Attorney General is responsible for the exchange of such information with the competent authorities of the contracting countries. Majority of the legislation require a criminal investigation being carried out in the requesting country before they authorized the exchange of information request.

The legislation includes

- The Criminal Justice Act 1990
- The Drug Trafficking Offences Act 1987
- The Prevention of Terrorism Act
- The Anti-Money Laundering Code 1998

Recent Developments

- As the response to the EU Savings Tax Directive, the Isle of Man revealed on 10 June 2003 that levy a withholding tax rather than exchange information on savings interest of EU residents from January 2005.
- On 13 December 2000 the IOM committed to the OECD Harmful Tax Initiatives program by committing to implement effective exchange of information and the transparency principle by 31 December, 2005.

The agreement allows information to be exchanged, on reciprocal basis, with other tax authorities, upon request. The information will provided through administrative means in relation to criminal tax matters and defined civil tax matters; to persons or authorities concerned with assessment or collection of tax, and enforcement and prosecution in respect of appeals in relation to taxes.

The absence of an IOM interest in the case or in the information, and the fact that the conduct being investigated would not constitute a crime under the IOM Law, is not to be a bar to the provision of the information.

The IOM authorities also committed to ensuring that information on beneficial ownership of companies, partnerships and other legal entities established in the IOM, including managers of collective investment funds, and trustees and beneficiaries of trusts, is available to its tax or regulatory authorities.

- The Island of Man is currently negotiating tax information exchange agreements with Germany and Ireland, which are based on OECD Model Tax Information Exchange Agreement.

Sources of information

Anglo Irish Bank: www.angloirishbank.co.im

Isle of Man Treasury: www.gov.im/treasury

Financial Supervision Commission: www.gov.im/fsc

Exchange of information in Ireland

Exchangers of information

- Irish Revenue

Who are responsible for collecting and managing taxes and duties; administering the Customs regime for the control of imports and exports and collection of duties and levies on behalf of the EU; and working in cooperation with other State Agencies in the fight against drugs and in other cross Department initiatives.

- Office of the Director of Corporate Enforcement

The Company Law Enforcement Act, 2001 establishes the office of Director of Corporate Enforcement, and transfers to the Director the powers formerly exercised by the Minister for Enterprise, Trade and Employment in the areas of company investigations and company law prosecutions.

The Director is responsible for encouraging compliance with company law; and investigating and enforcing suspected breaches of the legislation. If there are reasonable grounds for believing that an indictable offence under the Companies Acts has been committed, the Director should refer the case to the Director of Public Prosecutions. The information obtained by virtue of the performance by the Director of any of his function can only be disclosed to a member of An Garda Síochána, if the information relates to the commission of an offence which is not an offence which is not an offence under the Companies Act.

Exchange of information is provided for under

- Double taxation agreements
- EU Mutual Assistance Directive (EU Council Directive 77/799/EEC)
- Anti- money laundering legislation

Double Taxation Agreements

Ireland currently has double taxation agreements with 41 different countries, namely being

Australia, Austria, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, India, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, the UK, the US and Zambia.

Majority of the treaties is predominantly based on the OECD Model Tax Convention on Income and on Capital Gains. Agreements include provision for the exchange of information (Article 26 of OECD Model Convention) between the two Revenue authorities to prevent tax avoidance or evasion. The Contracting States shall exchange (on request) such information as is necessary for carrying out the provisions of the Double Taxation Convention or of the domestic laws concerning

taxes of every kind and description imposed on behalf of the Contracting States. The information will be treated as confidential and only disclosed to persons concerned with assessment or collection of tax.

The Contracting State is not obliged to supply information which is not obtainable under the laws or in the normal course of administration of that or of the other Contracting State; or to supply information which would disclose a professional secret.

Automatic exchange of information between competent authorities may also be undertaken. This would typically be a computer printout of information relating to taxpayers addresses in the other country who regularly receive income (e.g. interest, dividends, pensions, etc.) from sources in the country making the exchange.

EU Mutual Assistance Directive

The Directive is concerned with mutual assistance by the competent authorities of the EU Member States in the field of direct taxation. By the provision of this Directive Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital. The information can be exchanged on request, automatically or spontaneously.

All information received shall be kept secret in that State in the same manner as information received under its domestic legislation. Such information can only be disclosed to the persons who are directly involved in the assessment of the tax.

Where a competent authority of a Member State considers that the information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of competent authority which supplied the information.

The Directive shall impose no obligation to have enquiries carried out or to provide information if the requested state would be prevented by its laws from carrying out these enquiries.

Anti- Money Laundering Legislation

The Criminal Justice Act, 1994, is Ireland's primary piece of legislation for dealing with money laundering. The Act requires designated bodies (which provided a range of financial services, including audit, accounting and tax advisors) to report suspicions of money laundering to the Gardai. It also contains provisions for obtaining information for the purposes of investigating or prosecuting criminal offences, including fiscal offences in other countries. The money laundering provisions of the Criminal Justice Act 1994 were enacted to give effect to the EC directive on money laundering.

Ireland has also ratified a number of relevant Conventions, namely

- The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- The Council of Europe Convention on Mutual Assistance in Criminal Matters
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime

Which provide for exchange of information between the Member States in the case of a criminal investigation.

Power of Irish Revenue to obtain information

Chapter 4 of Tax Consolidation Act 1997 sets out the number of powers available to inspectors of the Revenue Commissioners to obtain information. It is updated by a statement of practice SP-Gen/1/99.

According to the legislation an authorised officer may serve notice on a financial institution, on a third party (third party other than a financial institution) or the taxpayer himself requiring it to make available for inspection such books and records or to furnish such information and explanations in relation to named person as may be specified in the notice. The requirements contained in the notice must be relevant to the person's liability to any of the taxes or duties under the care and management of the Revenue Commissioners. This power can only be used by an authorised officer in any particular situation with the prior written consent of one of the three Revenue Commissioners.

Recent Developments

- Negotiation for double taxation agreements with Egypt, Greece, Iceland, Malta and Singapore are completed, it is expected that these will be signed and ratified during 2003. New treaties with Argentina, Turkey and Ukraine are in the course of being negotiated.
- A tax information exchange agreement with the Isle of Man is being currently negotiated. The agreement will provide for exchange of information based upon a formal request being received by the competent authority (Irish Revenue) in Ireland. A request must be made on an individual case basis and the subject of the request must be under investigation in the requesting jurisdiction.

Sources of Information

Irish Revenue: www.revenue.ie

OECD: www.oecd.org

Exchange of information in Jersey

Exchangers of information

- States of Jersey Income Tax Department

Who assess and collect tax, and rule on complex transactions with an international dimension. The responsibility of exchange of information is delegated to the Comptroller of Income tax or his authorized representative.

- Jersey Financial Services Commission

The Commission is responsible for the supervision of the financial services sector as well as depositor, investor and policyholder arrangements in the Island.

Exchange of information is provided for under

- Double taxation agreements
- Exchange of information agreement
- Anti- money laundering legislation
- Memoranda of Understanding

Double taxation agreements

Jersey has double tax agreements with the United Kingdom (1952) and with Guernsey (1956). Both contain Schedule 10 providing for exchange of information between the Comptroller of Income Tax and the Commissioners of Inland Revenue in the UK or the Administrator of Income in Guernsey.

The information to be exchanged (being information available under the respective taxation laws) is such as necessary for carrying out the provision of the double taxation agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to taxes which are subject to the Treaty.

Any information exchanged is to be treated as secret and is not to be disclosed to any persons other than those concerned with the assessment and collection of the taxes. The provisions of the Jersey/UK agreement are not to be used by the UK authorities to obtain information for passing to a third-party tax authority.

Jersey also has a double taxation agreement with France (1964) which covers shipping and air transport profits.

Exchange of tax information agreement

Jersey signed an agreement with the US in November 2002 to share information on taxes as part of a campaign to tackle tax evasion and the threat of terrorist money laundering.

The information to be exchanged between tax authorities includes beneficial ownership information in the case of companies, partnership and trusts. Both countries committed to maintaining audited accounts to internationally accepted standards and allowing access to banking data for the tax authorities.

The requests must be made on individual case basis, and there are provision to prevent ‘fishing expeditions’. The information is not to be communicated to third parties.

Anti-money laundering legislation

The Island has a number of anti- money laundering legislation, including Criminal Justice (International Co-Operation) Law 2001, which allows for exchange of information between Jersey and overseas authorities in case of a criminal investigation.

A tax related offence would constitute “criminal conduct” if it is proven that there existed an act constituting deliberate false representation, thus causing actual gain prejudice to another and actual gain to the person accused. However, clients may legitimately benefit from Jersey’s tax regime and may invest in such a way that is tax neutral or which minimizes their tax liability.

Tipping off individuals that their business activities have drawn attention of the authorities is also an offence under Money Laundering Order 1999.

Other Anti-Money laundering legislation includes

- Drug Trafficking Offence (Jersey) Law 1988
- Prevention of Terrorism (Jersey) Law 1999
- Proceeds of Crime (Jersey) Law 1999

Memoranda of understanding

Jersey has MOUs on regulatory matters with following countries

Australia, Belgium, Bahrain, Bermuda, Germany, Gibraltar, Guernsey, France, Isle of Man, Mauritius, Netherlands, South Africa, the UK, the USA.

These MOUs cover regulatory assistance matters to be given in the content of new applications for licensing by financial institutions; investigations into regulatory offences such as insider dealing; and general enquiries that are relevant to the fitness and properness of registered institutions.

The information is provided on request, but spontaneous exchange of information is also possible.

Power of the Commission to obtain information

According to the Financial Services Commission Law 1998, the Commission shall have powers necessary for the carrying out of its functions, including the powers to

- Seek and exchange information relating to the supervision, development and promotion of financial services in the Island and the supervision and development of similar services carried outside the Island;
- Consult and seek the advice of such persons or bodies whether inside or outside the Island as it considers appropriate.

The general powers of the Commission to require provision of information and documents are described in Article 29 of the Financial Services Law 1998, which include

The Commission has the power to require a person or a third party to provide the information relating to the investment business of the registered person, or the compliance by those persons with the Financial Services Law. The person can only refuse to produce information which on the grounds of legal professional privilege. The Commission has the power to communicate the information to relevant foreign supervisory authority on request.

Recent Developments

- On 22 Feb 2002 Jersey has signed up to OECD initiative on 'Harmful Tax Competition' to block tax evasion. It committed to effective exchange of information and transparency, which will serve as basis for bilateral negotiations on tax exchange agreements and which Jersey will implement on a phased basis by 31 December 2005.

The commitment to effective exchange of information will require Jersey to

- ◆ maintain in place legal mechanisms that allow information to be provided to tax authorities upon specific requests for the investigation and prosecution of criminal tax matters
 - ◆ negotiate tax information exchange agreements
 - ◆ make such changes to its laws as are necessary in order to enable information to be exchanged in an effective manner.
- On the matter of EU Savings Tax Directive, Jersey announced on 10 June 2003 that it would, from January 2005, levy a withholding tax rather than exchange information on the savings interest of EU residents.
 - Jersey is planning to reduce its corporate tax to zero in the next 5 years.

Sources of information

States Of Jersey Income Department: www.incometax.gov.je

Financial Services Commission: www.jerseyfsc.org

Exchange of Information in the UK

Exchangers of information

- The Inland Revenue

Who is responsible for administration of tax, including income and corporate tax. Requests for information received from foreign Revenues are normally dealt with by Special Compliance Office Liaison Group but occasionally Districts are requested to obtain information.

- HM Custom and Excise

UK Customs & Excise is a Government department with responsibility of collecting VAT, other taxes and customs duties. They also have a role of protecting the economy from illegal imports of drugs, alcohol and tobacco smuggling and tax fraud.

- Financial Services Authority

The Financial Services Authority (FSA) is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000. One of their statutory objectives is reduction of financial crime.

Exchange of information is provided for under

- Double taxation treaties
- Mutual Assistance Directive
- Anti Money Laundering Legislation

The UK has no tax information exchange agreements or conventions. It also has no mutual assistance treaties which provide for exchange of information for tax purposes beyond what the UK can provide under tax treaties and tax legislation.

Double tax treaties

The UK has over 100 double taxation agreements (the list of countries the UK has bilateral agreements with is attached at Annex A). The treaties may have different wording: the earliest treaties (such as treaties with Jersey and Isle of Man) follow the unconventional format and the latest treaties follow the OECD Model treaties format. Majority of the agreements contains an article providing for exchange of information for the purposes of carrying out the double taxation agreement, or domestic law of the parties concerning taxes within the double taxation treaty's scope.

The information supplied/received by Inland Revenue authorities is treated as being strictly confidential (protected by the Data Protection Act) and cannot be disclosed to third parties, including HM Customs and Excise. No information from a foreign authority can be disclosed to any other government department or to the police. Information concerning any business or trade secret will not be disclosed.

Mutual Assistance Directive

EC Directive on Mutual assistance NO. 777/799/EEC is implemented in domestic law by Section 77 Finance Act 1978. This provides for the disclosure of information for the purposes of taxation, or

of proceedings for failure to observe tax law. The information can be exchanged on request, automatically or spontaneously.

The information can only be exchanged if the contracting party has confidentiality rules no less strict than the UK confidentiality rules. The information received from the foreign Revenue can be disclosed to HM Customs and Excise.

The information received/supplied by the UK can be passed on to a third country (an EU member state) if the requesting/requested party considers it to be useful to the third member country. The exchange of information will take place subject to the confidentiality rules and agreement of the competent authority which supplied the information.

Anti-Money Laundering Legislation

Criminal Offences

Under the **Criminal Justice (International Co-operation) Act 1990**, the UK has certain powers to respond to requests from judicial authorities of other countries in cases involving investigation into or proceedings against alleged criminal offences, including fiscal offences. They apply when the UK has formal mutual legal assistance agreement with a requesting country. Assistance includes service of documents, taking evidence before UK courts and providing witnesses for court appearances. The act enables requesting countries to obtain evidence from third parties such as financial institutions in connection with criminal offences. There is no obligation on Inland Revenue to provide information about tax affairs of a particular individual.

Other anti-money laundering legislation includes

- Proceeds of Crime Act 1994
- Drug Trafficking Act 1995

Transfer Pricing

Under the Income and Corporation Taxes Act 1988 and Finance Act 1998, the Inland Revenue have power to require a UK resident company to produce books, accounts and other documents and records of any of its UK and foreign subsidiaries for the purposes of a transfer pricing enquiry. There is generally no legal obligation to comply with the Revenue's call for documentation in the possession of overseas affiliates (unless the taxpayer controls the affiliate); in practice it may be necessary to do so. This is because under the UK tax system, it is ultimately for the taxpayer to rebut any tax assessment raised by the Inland Revenue by producing evidence to support contention.

There is no domestic statutory power to obtain the information from the foreign parent of a subsidiary, but it may be obtainable via foreign authorities under the exchange of information article of the applicable double tax treaty.

General power of Inland Revenue to obtain information

Under the Taxes Management Act 1970, the UK Revenue cannot disclose any information about the affairs of a taxpayer except for the purposes of assessing and collecting taxes. Disclosure of

Information can be made to HM Custom and Excise, the Department of Health and Social Security and to certain Tax Authorities.

UK Revenue can only obtain information for the purposes of determining the UK tax bill of a UK person. The relevant information can be obtained from third parties, subject to the Consent of a General or Special Commissioner and due notice being given to the taxpayer.

In the case of spontaneous exchange of information, the information should be exchanged concerning transaction of such a nature that there is a reasonable suspicion that the tax laws of foreign Revenue may have been abused or tax has been evaded or avoided.

Recent Developments

- The UK government's Finance Bill 2003 includes a section that will allow the regulations of the European Savings and Tax Directive to be incorporated into British Law. The UK has agreed to collect information automatically about the payment of savings income to overseas residents, and to exchange it with other countries. Information to be exchanged includes details on the overseas beneficiaries and the payments made. This will include payments by building societies, banks and other deposit-takers; registrars, custodians and nominees; authorized unit trusts and open-ended investment companies; and any person who makes savings income payments in the course of their business. Reports will be made annually. The Directive will take effect after 1 January 2005.
- There are proposals of the UK negotiating Tax Information Exchange Agreements to enable the exchange of tax information between UK Inland Revenue and overseas authorities

Sources of Information

HM Stationary Office: www.hmso.gov.uk

Inland Revenue: www.inlandrevenue.gov.uk

Financial Services Authority: www.fsa.gov.uk

HM Customs and Excise: www.hmce.gov.uk

HM Treasury: www.hm-treasury.gov.uk

Disclaimer

No member company of the WiltonGroup, nor any associated firm, makes any representation or gives any warranty whatsoever as to the accuracy of the information in this publication or accepts any responsibility for the contents thereof.

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ANNEX A

UK's DOUBLE TAXATION CONVENTIONS (INCOME AND CAPITAL GAINS TAX)

Antigua	Luxembourg
Argentina	Macedonia (former UK/Yugoslavia)
Australia	Malawi
Austria	Malaysia
Azerbaijan	Mauritius
Bangladesh	Mexico
Belarus (former UK/USSR)	Mongolia
Belgium	Monserrat
Belize	Morocco
Bolivia	Myanmar
Botswana	Namibia
Brunei	Netherlands
Bulgaria	Nigeria
Burma	Norway
Canada	Oman
China	Pakistan
Croatia (former UK/Yugoslavia)	Papua New Guinea
Cyprus	Philippines
Denmark	Poland
Egypt	Portugal
Estonia	Romania
Falkland Islands	Russian Rederation
Fiji	St Kitts, Nevis
Finland	Singapore
France	Slovak Repbulic (former UK/Czechoslovakia)
Gambia	Slovenia (former UK/Yugoslavia)
Germany	Solomon Islands
Ghana	South Africa
Greece	Spain
Grenada	Sri Lanka
Guernsey	Sudan
Guyana	Swaziland
Hungary	Sweden
Iceland	Switzerland
India	Thailand
Indonesia	Trinidad & Tobago
Ireland	Tunisia
Isle of Man	Turkey
Israel	Turkmenistan (former UK/USSR)
Italy	Tuvalu
Ivory Coast	Uganda
Jamaica	Uganda
Japan	Ukraine
Jersey	USA
Kazakhstan	Uzbekistan
Kenya	Venezuela
Kiribati	Vietnam
Korea	Yugoslavie (Federal Republic of) (former UK/Yugoslavia)
Latvia	Zambia
Lesotho	Zimbabwe

Getting in touch with the

WiltonGroup

London

26 Grosvenor Street

Mayfair
London W1K 4QW

Tel: + 44 (0) 207 355 3525

Fax: + 44 (0) 207 355 3526

Isle of Man

22 Athol Street

Douglas
Isle of Man
IMI IJA

Tel: + 44 (0) 1624 675 610

Fax: + 44 (0) 1624 675 684

Dublin

68 Harcourt Street

Dublin 2
Ireland

Tel: + 353 (0) 1 405 4882

Fax: + 353 (0) 1 404 4883

Contacts

Taxation

Tony Flanagan
Ed Jakeway
Stephen Long

Accounting and Outsourcing

Nicole Hewson
Mark Rabbett
Mike Conroy

Corporate Finance

Gordon Wilson
Richard White

Corporate and Trust

Lee Fox
Malin Falla

Marine Services

Bruce Dutton

mail@wiltongroup.com

www.wiltongroup.com

LONDON

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