Draft Order laid before the House of Commons under section 815C(3) of the Income and Corporation Taxes Act 1988, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2005 No.

INCOME TAX

The Tax Information Exchange Agreement (Taxes on Income) (Guernsey) Order 2005

Made - - - -

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 815C(3) of the Income and Corporation Taxes Act 1988(**1**) a draft of this Order was laid before, and approved by a resolution of, the House of Commons;

Accordingly Her Majesty, in exercise of the power conferred upon Her by section 815C of the Act of 1988, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation

1. This Order may be cited as the Tax Information Exchange Agreement (Taxes on Income) (Guernsey) Order 2005.

Declaration about exchange of information

2.—(1) It is declared that the arrangements specified in the Agreement set out in Part I of the Schedule to this Order, and the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the States of Guernsey with a view to the exchange of information foreseeably relevant to the administration or enforcement of—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax; and

(**1**) 1988 c. 1. Section 815C was inserted by section 146(1) of the Finance Act 2000 (c. 17) and amended by section 88(2) of the Finance Act 2002 (c. 23) and section 198 of the Finance Act 2003 (c. 14).

(b) the laws of Guernsey concerning taxes imposed by Guernsey which are of a similar character to any of those taxes.

(2) It is further declared that it is expedient that the arrangements referred to in paragraph (1) should have effect.

Clerk of the Privy Council

SCHEDULE

PART I

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN GUERNSEY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

WHEREAS:

1. Article 17 of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive which provisions shall be applied from 1 January 2005 provided that—

"(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

(ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)".

2. The relationship of Guernsey with the EU is determined by Protocol 3 of the Treaty of Accession of the United Kingdom to the European Community. Under the terms of the Protocol Guernsey is not within the EU fiscal territory.

3. Guernsey notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive.

4. The "withholding tax" referred to in the Directive will be referred to as the "retention tax" in Guernsey's domestic legislation. For the purposes of this Agreement the two terms therefore are to be read coterminously as "withholding/retention tax" and shall have the same meaning.

5. Guernsey has agreed to apply a retention tax with effect from 1 January 2005 provided the Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 17(2) of this Agreement have generally been met.

6. Guernsey has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive.

7. Guernsey has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

Guernsey and the United Kingdom of Great Britain and Northern Ireland hereinafter referred to as a "contracting party" or the "contracting parties" unless the context otherwise requires,

Have agreed to conclude the following agreement which contains obligations on the part of the contracting parties only and provides for:

(a) the automatic exchange of information by the competent authority of the United Kingdom of Great Britain and Northern Ireland to the competent authority of Guernsey in the same manner as to the competent authority of a Member State;

(b) the application by Guernsey, during the transitional period defined in Article 10 of the Directive, of a retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

(c) the automatic exchange of information by the competent authority of Guernsey to the competent authority of the United Kingdom of Great Britain and Northern Ireland in accordance with Article 13 of the Directive;

(d) the transfer by the competent authority of Guernsey to the competent authority of the United Kingdom of Great Britain and Northern Ireland of 75% of the revenue of the retention tax;

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term "competent authority" when applied to the contracting parties means "The Commissioners of Inland Revenue or an authorised representative" in respect of the United Kingdom of Great Britain and Northern Ireland and "the Administrator of Income Tax" in respect of Guernsey.

ARTICLE 1

Retention of Tax by Paying Agents

Interest payments as defined in Article 8 of this Agreement which are made by a paying agent established in Guernsey to beneficial owners within the meaning of Article 5 of this Agreement who are residents of the United Kingdom of Great Britain and Northern Ireland shall, subject to Article 3 of this Agreement, be subject to a retention from the amount of interest payment during the transitional period referred to in Article 14 of this Agreement starting at the date referred to in Article 15 of this Agreement. The rate of retention tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

ARTICLE 2

Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 8 of this Agreement, are made by a paying agent established in the United Kingdom of Great Britain and Northern Ireland to beneficial owners, as defined in Article 5 of this Agreement, who are residents of Guernsey, or where the provisions of Article 3(1)(a) of this Agreement apply, the paying agent shall report to its competent authority;

(a) the identity and residence of the beneficial owner established in accordance with Article 6 of this Agreement;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests;

(d) information concerning the interest payment specified in Article 4(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund;

and the United Kingdom of Great Britain and Northern Ireland will comply with paragraph 2 of this Article.

(2) Within six months following the end of their tax year, the competent authority of the United Kingdom of Great Britain and Northern Ireland shall communicate to the competent authority of Guernsey, automatically, the information referred to in paragraph (1) (a)–(d) of this Article, for all interest payments made during that year.

ARTICLE 3

Exceptions to the Retention Tax Procedure

(1) Guernsey when levying a retention tax in accordance with Article 1 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:

(a) a procedure which allows the beneficial owner as defined in Article 5 of this Agreement to avoid the retention tax specified in Article 1 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;

(b) a procedure which ensures that retention tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.

(2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating:

(i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(ii) the name and address of the paying agent;

(iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

(3) Where paragraph (1)(a) of this Article applies, the competent authority of Guernsey in which the paying agent is established shall communicate the information referred to in Article 2(1) of this Agreement to the competent authority of the United Kingdom of Great Britain and Northern Ireland as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

ARTICLE 4

Basis of assessment for retention tax

(1) A paying agent established in Guernsey shall levy retention tax in accordance with Article 1 of this Agreement as follows:

(a) in the case of an interest payment within the meaning of Article 8(1)(a) of this Agreement: on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 8(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;