

AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF GUERNSEY
FOR THE EXCHANGE OF INFORMATION RELATING
TO TAX MATTERS AND THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME OF INDIVIDUALS

The Government of Japan and the Government of Guernsey, the Government of Guernsey having the right under the terms of its Entrustment from the Government of the United Kingdom of Great Britain and Northern Ireland to negotiate and conclude a tax information exchange agreement,

Desiring to conclude an Agreement for the exchange of information relating to tax matters and the avoidance of double taxation with respect to taxes on income of individuals,

Have agreed as follows:

Chapter 1
GENERAL PROVISIONS

Article 1
GENERAL DEFINITIONS

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

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Guernsey", when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands established in accordance with international law;

- (c) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in the case of Japan, the Minister of Finance or his authorised representative; and
 - (ii) in the case of Guernsey, the Director of Income Tax or his authorised delegate;
- (f) the term "Contracting Party" means Japan or Guernsey as the context requires;
- (g) the term "information" means any fact, statement, document or record in any form whatever;
- (h) the term "information gathering measures" means laws and administrative or judicial procedures that enable the Requested Party to obtain and provide the information requested;
- (i) the term "national" means:
 - (i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and

- (ii) in the case of Guernsey, any individual who is a resident of Guernsey and possesses British citizenship, any legal person created or organised under the laws of Guernsey and any organisation without legal personality treated for the purposes of Guernsey tax as a legal person created or organised under the laws of Guernsey;
- (j) the term "person" includes an individual, a company and any other body of persons;
- (k) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of a company;
- (l) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be readily purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (m) the term "recognised stock exchange" means:
 - (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
 - (ii) the Channel Islands Stock Exchange; and
 - (iii) any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (n) the term "Requested Party" means the Contracting Party which is requested to provide information or which has provided information in response to a request; and
- (o) the term "Requesting Party" means the Contracting Party which is requesting information.

2. As regards the application of this 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 laws of that Contracting Party, 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.

Chapter 2
EXCHANGE OF INFORMATION

Article 2
OBJECT AND SCOPE

The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant for the carrying out of Chapters 3 and 4 or to the administration or enforcement of the laws of the Contracting Parties concerning the taxes referred to in Article 4. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with this Agreement and shall be treated as confidential in the manner provided in Article 8. When the Requested Party obtains and provides information under the Agreement, the procedural rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable, to the extent that they do not unduly prevent or delay effective exchange of information.

Article 3
JURISDICTION

The Requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

Article 4
TAXES COVERED

1. This Chapter shall apply to the following taxes:
 - (a) in the case of Japan:
 - (i) the income tax;
 - (ii) the corporation tax;

- (iii) the local inhabitant taxes;
 - (iv) the inheritance tax;
 - (v) the gift tax; and
 - (vi) the consumption tax; and
- (b) in the case of Guernsey:
- (i) income tax; and
 - (ii) dwellings profits tax.

2. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws, which may affect matters covered by the Agreement.

Article 5
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 2. Such information shall be provided without regard to whether the Requested Party needs such information for its own tax purposes or the conduct under examination would constitute a crime under the laws of the Requested Party if such conduct occurred within the territorial jurisdiction of the Requested Party.

2. 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, the Requested Party shall use all relevant information gathering measures necessary to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its laws, in the form of authenticated copies of original records.

4. Each Contracting Party shall ensure that it has the authority, for the purposes specified in Article 2 and within the constraints of Article 3, to obtain and provide, through its competent authority, upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and
- (b)
 - (i) information regarding the ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Requesting Party shall formulate a request for information under this Agreement with the greatest detail possible and shall provide the following information in writing to the competent authority of the Requested Party to demonstrate the foreseeable relevance of the information sought to the request for the purposes referred to in Article 2:

- (a) the identity of the person under examination;
- (b) the period of time with respect to which the information requested is required for the tax purposes of the Requesting Party;
- (c) the nature of the information requested and the form in which the Requesting Party prefers to receive the information from the Requested Party;
- (d) the tax purposes for which the information requested is sought;

- (e) the reason why the information requested is foreseeably relevant to the request for the purposes referred to in Article 2;
- (f) grounds for believing that the information requested is held by the Requested Party or is in the possession of or obtainable by a person who is within the territorial jurisdiction of the Requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the Requesting Party, that if the information requested was within the territorial jurisdiction of the Requesting Party the competent authority of the Requesting Party would be able to obtain the information under the laws or in the normal course of administrative practices of the Requesting Party and that the request is in conformity with the Agreement; and
- (i) a statement that the Requesting Party has pursued all means available within its territorial jurisdiction to obtain the information requested, except those that would give rise to disproportionate difficulties.

Article 6
TAX EXAMINATIONS ABROAD

1. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may allow, to the extent permitted under the laws of the Requested Party, representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the Requested Party.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the examination shall be made by the Requested Party conducting the examination.

Article 7
POSSIBILITY OF DECLINING A REQUEST

1. The Requested Party shall not be required to obtain or provide information that if the information requested was within the territorial jurisdiction of the Requesting Party the competent authority of the Requesting Party would not be able to obtain under the laws or in the normal course of administrative practices of the Requesting Party.

2. The competent authority of the Requested Party may decline to assist:

- (a) where the request of the Requesting Party is not made in conformity with this Agreement;
- (b) where the Requesting Party has not pursued all means available within its territorial jurisdiction to obtain the information requested, except where recourse to such means would give rise to disproportionate difficulties; and
- (c) where the disclosure of the information requested would be contrary to public policy (ordre public) of the Requested Party.

3. This Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Such information includes information relating to communications between advocates, attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the laws of each Contracting Party. Notwithstanding the foregoing sentences, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce any provision of the tax laws of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

Article 8
CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Contracting Parties under this Agreement shall be kept confidential.

2. The information referred to in paragraph 1 shall be disclosed only to persons or authorities (including courts and administrative bodies) in the Contracting Parties concerned with the purposes referred to in Article 2, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, the information may be disclosed in public court proceedings or in judicial decisions.

3. The information referred to in paragraph 1 may not be used for any purpose other than for the purposes referred to in Article 2 without the express written consent of the competent authority of the Requested Party.

4. The information referred to in paragraph 1 may not be disclosed to persons or authorities in non-Contracting Parties.

Article 9
COSTS

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

Chapter 3
AVOIDANCE OF DOUBLE TAXATION

Article 10
PERSONS COVERED

This Chapter shall apply to individuals who are residents of one or both of the Contracting Parties.

Article 11
TAXES COVERED

1. This Chapter shall apply to the following taxes:

(a) in the case of Japan:

(i) the income tax; and

(ii) the local inhabitant taxes

(in this Chapter referred to as "Japanese tax");
and

(b) in the case of Guernsey, income tax

(in this Chapter referred to as "Guernsey tax").

2. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws, which may affect matters covered by the Agreement.

Article 12 RESIDENT

1. For the purposes of this Chapter, the term "resident of a Contracting Party" means any individual who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature. This term, however, does not include any individual who is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

2. Where by reason 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 13
GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting Party. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other Contracting Party and the individual is a resident of that other Contracting Party who did not become a resident of that other Contracting Party solely for the purpose of rendering the services.

2. Notwithstanding paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority shall be taxable only in that Contracting Party.

3. Paragraphs 1 and 2 shall not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or local authority thereof.

Article 14
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 in the first-mentioned Contracting Party, provided that such payments arise from sources outside the first-mentioned Contracting Party. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date on which he first begins his training in the first-mentioned Contracting Party.

Article 15
ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, where a resident of Japan derives income from Guernsey which may be taxed in Guernsey in accordance with this Chapter, the amount of Guernsey tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax, as computed before the credit is given, which is appropriate to that income.

2. Subject to the provisions of the laws of Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey (which shall not affect the general principle hereof):

- (a) subject to the provisions of sub-paragraph (c), where a resident of Guernsey derives income which may be taxed in Japan in accordance with this Chapter, Guernsey shall allow as a credit against the tax payable in respect of that income, an amount equal to the income tax paid in Japan;
- (b) such credit shall not, however, exceed that part of the income tax, as computed before the credit is given, which is attributable to the income which may be taxed in Japan;
- (c) where a resident of Guernsey derives income which shall be taxable only in Japan in accordance with this Chapter, Guernsey may include this income in calculating the amount of tax on the remaining income of such resident.

Chapter 4
SPECIAL PROVISIONS

Article 16
MUTUAL AGREEMENT PROCEDURES

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with Chapter 3, he may, irrespective of the remedies provided by the laws of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident as determined pursuant to Article 12. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with that Chapter.

2. The competent authority of a Contracting Party 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 Chapter 3. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. In addition to the agreements referred to in paragraph 3, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used for the purposes of Chapter 2.

5. 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 of this Article.

Chapter 5
FINAL PROVISIONS

Article 17
HEADINGS

The headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

Article 18
ENTRY INTO FORCE

1. The Governments of the Contracting Parties shall notify each other, in writing, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications.

2. This Agreement shall have effect:

- (a) with respect to taxes levied on the basis of a taxable year, as regards taxes for any taxable years beginning on or after the date on which the Agreement enters into force; and
- (b) with respect to taxes not levied on the basis of a taxable year, as regards taxes levied on or after the date on which the Agreement enters into force.

3. Notwithstanding paragraph 2, Chapter 3 shall have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which this Agreement enters into force; and
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

Article 19
TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;

- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (c) with respect to other taxes, as regards taxes levied on or after 1 January in the calendar year next following that in which the notice is given.

2. Notwithstanding paragraph 1, each Contracting Party shall remain bound by Article 8 with respect to any information provided and received by the competent authority of the Contracting Party under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London this sixth day of December, 2011, in the Japanese and English languages, each text being equally authentic.

For the Government
of Japan:

Keiichi Hayashi

For the Government
of Guernsey:

Lyndon Trott

PROTOCOL

At the signing of the Agreement between the Government of Japan and the Government of Guernsey for the exchange of information relating to tax matters and the avoidance of double taxation with respect to taxes on income of individuals (hereinafter referred to as "the Agreement"), the Government of Japan and the Government of Guernsey, the Government of Guernsey having the right under the terms of its Entrustment from the Government of the United Kingdom of Great Britain and Northern Ireland to negotiate and conclude a tax information exchange agreement, have agreed upon the following provisions, which shall form an integral part of the Agreement.

With reference to Article 5 of the Agreement, the competent authority of the Requested Party shall forward the information requested as promptly as possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within sixty days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within ninety days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, immediately inform the competent authority of the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at London this sixth day of
December, 2011, in the Japanese and English languages, each
text being equally authentic.

For the Government
of Japan:

Keiichi Hayashi

For the Government
of Guernsey:

Lyndon Trott