STATES OF JERSEY



RATIFICATION OF THE AGREEMENT ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS BETWEEN THE GOVERNMENT OF JERSEY AND THE KINGDOM OF BELGIUM

Lodged au Greffe on 14th April 2014 by the Minister for External Relations

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to ratify the Agreement between the Government of Jersey and the Kingdom of Belgium on the exchange of information relating to tax matters, as set out in Appendix 1 to the report of the Minister for External Relations dated 1st April 2014.

MINISTER FOR EXTERNAL RELATIONS

REPORT

Background

- 1. In February 2002, Jersey entered into a political commitment to support the OECD tax initiative on transparency and information exchange through the negotiation of Tax Information Exchange Agreements to an agreed international standard.
- 2. In September 2009, the Global Forum on Transparency and Information Exchange for Tax Purposes, a body of which over 120 jurisdictions are now members, agreed a peer review process to assess compliance with the international standard.
- 3. Successive G20 summits have encouraged jurisdictions to make progress in agreeing, implementing and abiding by the necessary international Agreements for information exchange. In response, Jersey has maintained an active programme of negotiating Agreements with EU, OECD and G20 member jurisdictions. This has served to enhance the Island's international personality, and generally has helped to engender a more favourable view of the Island amongst the international community.
- 4. The international tax information exchange standard can be met through either a Tax Information Exchange Agreement (TIEA) or a Double Taxation Agreement (DTA). The advantage of a DTA is that it offers benefits to individuals and the business community through the avoidance of double taxation or reduced rates of withholding tax, in addition to providing for exchange of information to the international standard. However, the majority of jurisdictions with whom the Island has sought to negotiate an Agreement have not been prepared to consider a DTA on the grounds that they would derive little, if any, benefit from such an Agreement because Jersey is a zero-tax jurisdiction.
- 5. The latest position in respect of the programme of negotiating tax Agreements is attached as **Appendix 2** to this report. A total of 35 TIEAs and 8 DTAs have now been signed, of which 28 TIEAs and 7 DTAs are in force. Almost without exception, the delay in bringing Agreements into force is due to the length of time taken by the other parties to the Agreements to complete their domestic procedures for the ratification of the Agreements.
- 6. Jersey has attached particular importance to entering into Agreements with the EU, OECD and G20 member jurisdictions. Agreements have been signed, or negotiations have been completed or are well advanced, with 27 of the 28 EU member states, 33 of the 34 OECD members, and 17 of the 19 G20 countries (the 20th member of the G20 is the European Union).
- 7. Jersey is party to the Peer Review process of assessment of compliance with the international standards, and a report of the assessment of Jersey was published at the end of October 2011. The review concluded that Jersey's domestic laws provide a satisfactory framework for the exchange of relevant information. The assessors said: "... overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible... Jersey practices to date have demonstrated a

responsive and co-operative approach". In November 2013, the Global Forum announced the compliance ratings of 50 jurisdictions based on their previous assessments. Jersey was rated as largely compliant, the same rating as the United Kingdom and the USA.

The Agreement with the Kingdom of Belgium

- 8. The Agreement entered into with the Kingdom of Belgium ("the Agreement") is a continuation of the ongoing programme of entering into tax Agreements to the international standard with EU, OECD and G20 member jurisdictions. Belgium is a member of the EU, and tax Agreements now signed with EU Member States total 20, with negotiations well advanced with another 7.
- 9. The Agreement is attached as **Appendix 1** to this report. The Agreement is in line with the OECD Model TIEA and provides for the exchange of information on tax matters on request. It is consistent with Agreements signed previously with other jurisdictions and which the States have ratified.
- 10. Great importance is attached to maintaining a good relationship with the EU Member States, and this Agreement is seen as a significant further strengthening of that relationship which will help to facilitate greater market access.

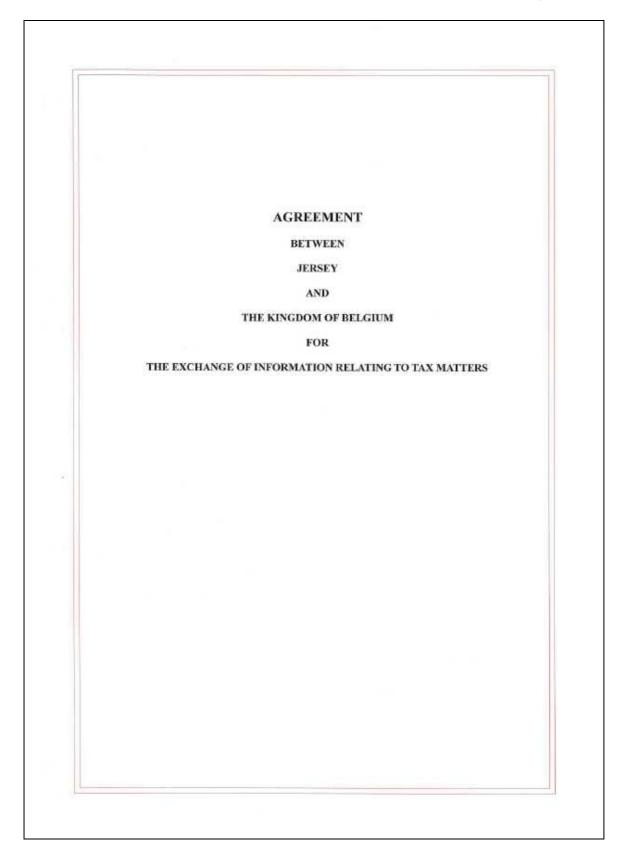
Procedure for signing and ratifying the Agreement

- 11. The signing of the Agreement was undertaken by the Minister for External Relations in London at the residence of the Belgian Ambassador on 13th March 2014. The signing was in accordance with the provisions of Article 18(2) of the States of Jersey Law 2005 and paragraph 1.8.5 of the Strategic Plan 2006–2011 adopted by the States on 28th June 2006. The Council of Ministers has authorised the Chief Minister, in concurrence with the Minister for External Relations, to sign on behalf of the Government of Jersey, and has further authorized the Chief Minister to delegate the signing to the Minister for Treasury and Resources or the Assistant Chief Minister as appropriate.
- 12. The Agreement is now being lodged *au Greffe* for ratification by the States, following which it will be published and entered into the official record. The Agreement will enter into force when the domestic procedures of both parties have been completed.
- 13. The States, on 29th January 2008, adopted the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. The Schedule to these Regulations lists the third countries, and includes the taxes covered by the Agreements being entered into. The necessary Regulations to provide for the inclusion in the Schedule of Belgium, and the relevant taxes covered, are being separately lodged *au Greffe* for adoption by the States.

Financial and manpower implications

14.	There are no implications expected for the financial or manpower resources of
	the States arising from the ratification and implementation of the Agreement.

1st April 2014



AGREEMENT BETWEEN JERSEY AND THE KINGDOM OF BELGIUM FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

WHEREAS Jersey and the Kingdom of Belgium (the Contracting Parties) wish to enhance and facilitate the terms and conditions governing the exchange of information related to taxes;

WHEREAS it is acknowledged that the Government of Jersey has the right under the terms of its entrustment from the UK to negotiate, conclude, perform and subject to the terms of this Agreement, terminate a tax information exchange agreement between Jersey and the Kingdom of Belgium;

NOW, THEREFORE,

THE GOVERNMENT OF JERSEY, on the one hand,

and

THE BELGIAN FEDERAL GOVERNMENT,
THE FLEMISH GOVERNMENT,
THE GOVERNMENT OF THE FRENCH COMMUNITY,
THE GOVERNMENT OF THE GERMAN-SPEAKING COMMUNITY,
THE GOVERNMENT OF THE WALLOON REGION,
and THE GOVERNMENT OF THE BRUSSELS-CAPITAL REGION,
on the other hand,

HAVE AGREED to conclude the following Agreement, which contains obligations on the part of the Contracting Parties only.

Article 1 Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. 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 the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2 Jurisdiction

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

Article 3 Taxes Covered

- This Agreement shall apply to taxes of every kind and description imposed on behalf of the Contracting Parties, or of the political subdivisions or local authorities in the case of Belgium.
- 2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other in writing of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4 Definitions

- For the purposes of this Agreement, unless otherwise defined:
 - a) the term "Jersey" means the Bailiwick of Jersey, including the territorial sea;
 - the term "Belgium" means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

- c) the term "competent authority" means
 - in the case of Jersey, the Treasury and Resources Minister or his authorised representative;
 - ii) in the case of Belgium, as the case may be, the Minister of Finance of the Federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;
- the term "person" includes an individual, a company and any other body or group of persons;
- the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) 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 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;
- g) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- i) 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;
- j) the term "tax" means any tax to which the Agreement applies;
- k) the term "requesting Party" means the Contracting Party requesting information;
- the term "requested Party" means the Contracting Party requested to provide information;
- m) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- n) the term "information" means any fact, statement or record in any form whatever;
- the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

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 law of that Party, any meaning under the applicable tax laws of that Party
prevailing over a meaning given to the term under other laws of that Party.

Article 5 Exchange of Information upon Request

- The competent authority of the requested Party shall provide upon request information for the
 purposes referred to in Article 1. Such information shall be exchanged without regard to
 whether the conduct being investigated would constitute a crime under the laws of the requested
 Party if such conduct occurred in the territory of the requested Party. The competent authority of
 the requesting Party should only make a request pursuant to the Article when it is unable to
 obtain the requested information by other means within its own territory, except where recourse
 to such means would give rise to disproportionate difficulty.
- 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 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.
- If specifically requested by the competent authority of a requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
- 4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, and in accordance with Article 2 of the Agreement, 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;
 - information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and
 - in the case of collective investment funds or schemes, information on shares, units and other interests;
 - ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
 - iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
 - iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).

Further, 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.

- The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - a) the identity of the person under examination or investigation;
 - a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
 - the tax purpose for which the information is sought;
 - grounds for believing that the information requested is held in the requested Party or is in the possession or control of or obtainable by a person within the jurisdiction of the requested Party;
 - to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
 - f) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
- 6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party, advise if there are any unexpected delays in obtaining the requested information and shall use its best endeavours to forward the requested information to the requesting Party as soon as possible.

Article 6 Tax Examinations Abroad

- With reasonable notice a Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
- At the request of the competent authority of one Contracting Party, the competent authority of
 the other Contracting Party may allow representatives of the competent authority of the firstmentioned Party to be present at the appropriate part of a tax examination in the secondmentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other 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 first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7 Possibility of Declining a Request

- The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
- 2. The provisions of this Agreement shall not impose on a Contracting Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4, shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
- The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).
- 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 a provision of the tax law 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

- All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.
- Information provided to the competent authority of the requesting Party may not be used for any
 purpose other than the purposes stated in Article 1 without the prior expressed written consent
 of the requested Party.
- 3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

 The information provided to the requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9 Costs

Unless the competent authorities of the Contracting Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance where the costs of providing information with respect to a specific request are expected to be significant.

Article 10 Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 11 Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 12 Other International Agreements or Arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

Article 13 Mutual Agreement Procedure

- Where difficulties or doubts arise between the Contracting Parties regarding the implementation
 or interpretation of the Agreement, the competent authorities shall endeavour to resolve the
 matter by mutual agreement.
- In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
- The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
- 4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 14 Entry into Force

Each of the Contracting Parties shall notify to the other in writing the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications, and shall have effect:

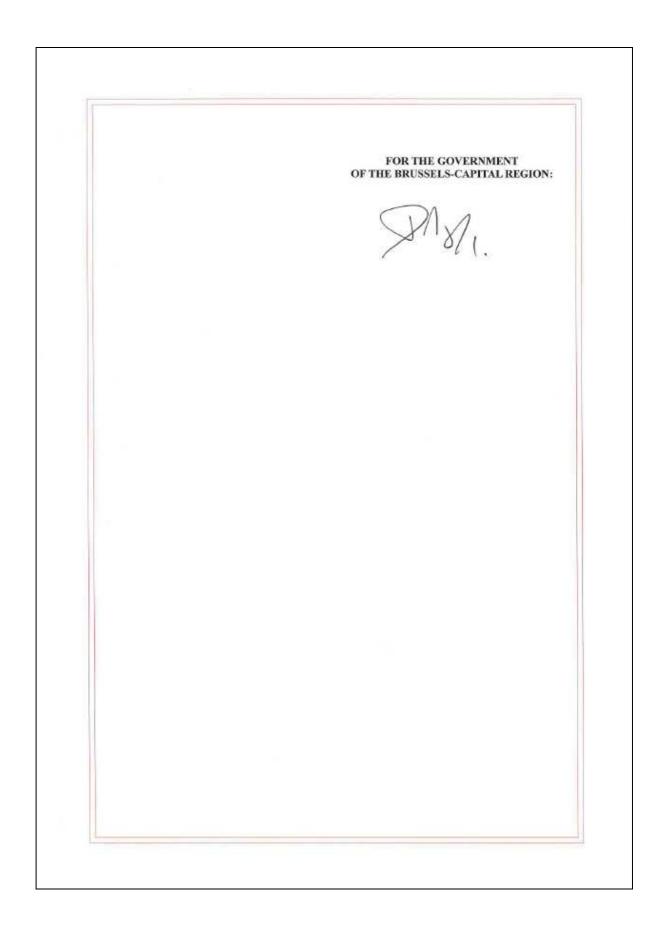
- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date, or, where there is no taxable period, all charges to tax arising on or after that date.

Article 15 Termination

- Either Contracting Party may terminate the Agreement by serving a notice of termination in writing to the competent authority of the other Contracting Party.
- Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests for information received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

 After termination of the Agreement, the provisions of Article 8 with respect to any in 	Contracting Parties shall remain bound by the formation obtained under the Agreement.			
IN WITNESS WHEREOF, the undersigned, it Governments, have signed this Agreement.	neing duly authorised thereto by their respective			
DONE in duplicate at London, on the 13 day of March 2014, in the English language.				
FOR THE GOVERNMENT OF JERSEY:	FOR THE BELGIAN FEDERAL GOVERNMENT:			
Phinip Barhuno	MAN.			
	FOR THE FLEMISH GOVERNMENT:			
	M.			

FOR THE GOVERNMENT OF THE GOVERNMENT OF THE GOVERNMENT OF THE GERMAN-SPEAKING
OF THE GERMAN-SPEAKING COMMUNITY:
FOR THE GOVERNMENT OF THE WALLOON REGION:



STATES OF JERSEY

A. TAX INFORMATION EXCHANGE AGREEMENTS (TIEAs)

1. TIEAs signed

		Ratified by	Ratified by	
Countries	Date Signed	Jersey	other Party	Entry into Force
U.S.A.	Nov. 2002	May 2006	Nov. 2002	23rd May 2006
Netherlands	June 2007	Feb. 2008	Dec. 2007	1st March 2008
Germany	July 2008	January 2009	July 2009	28th August 2009
Sweden	October 2008	March 2009	Nov. 2009	23rd Dec. 2009
Norway	October 2008	March 2009	Sep. 2009	7th October 2009
Iceland	October 2008	March 2009	October 2009	3rd Dec. 2009
Finland	October 2008	March 2009	Dec. 2008	3rd August 2009
Denmark	October 2008	March 2009	March 2009	6th June 2009
Greenland	October 2008	March 2009	March 2009	6th June 2009
Faroes	October 2008	March 2009	June 2009	21st August 2009
U.K.	March 2009	July 2009	Nov. 2009	27th Nov. 2009
France	March 2009	July 2009	July 2010	11th October 2010
Ireland	March 2009	July 2009	April 2010	5th May 2010
Australia	June 2009	Nov. 2009	January 2010	5th January 2010
New Zealand	July 2009	Nov. 2009	Sep. 2010	27th October 2010
Portugal	July 2010	Sep. 2010	March 2011	9th Nov. 2011
People's Republic				
of China	October 2010	January 2011	October 2011	10th Nov. 2011
Turkey	Nov. 2010	Feb. 2011	August 2013	11th Sep. 2013
Mexico	Nov. 2010	Feb. 2011	Feb. 2012	22nd March 2012
Canada	January 2011	March 2011	Dec. 2011	19th Dec. 2011
Indonesia	April 2011	July 2011	(1st half 2014)	(1st half 2014)
Czech Republic	July 2011	Nov. 2011	March 2012	14th March 2012
South Africa	July 2011	Nov. 2011	January 2012	29th Feb. 2012
Argentina	July 2011	Sep. 2011	July 2011	9th Dec. 2011
India	Nov. 2011	April 2012	January 2012	8th May 2012
Japan	Dec. 2011	April 2012	June 2013	30th August 2013
Poland	Dec. 2011	April 2012	August 2012	1st Nov. 2012
Italy	March 2012	May 2012	(1st half 2014)	(1st half 2014)
Austria	Sep. 2012	Nov. 2012	March 2013	1st June 2013
Latvia	January 2013	March 2013	Dec. 2013	1st March 2014
Brazil	January 2013	March 2013	(1st half 2014)	(1st half 2014)
Switzerland	Sep. 2013	(Dec. 2013)	(1st half 2014)	(1st half 2014)
Slovenia	Nov. 2013	(Feb. 2014)	(1st half 2014)	(1st half 2014)
Hungary	January 2014	(March 2014)	(2nd half 2014)	(2nd half 2014)
Belgium	March 2014	(May 2014)	(2nd half 2014)	(2nd half 2014)

Note: dates in brackets are the expected dates based on latest information from the country concerned.

2. TIEAs initialled or agreed ready for signing:

- Chile
- Greece
- Republic of Korea
- Spain

3. TIEAs where negotiations are well advanced with a draft Agreement exchanged:

- Bulgaria
- Kenya
- Lithuania
- Romania
- Slovakia

4. Jurisdictions approached but from whom a formal response is awaited:

Russia

B. DOUBLE TAXATION AGREEMENTS (DTAs)

1. DTAs signed:

- Malta –
 signed January 2010
 ratified by Malta February 2010
 ratified by Jersey June 2010
 in force 19th July 2010
- Estonia –
 signed December 2010
 ratified by Jersey March 2011
 ratified by Estonia December 2011
 in force 30th December 2011
- Hong Kong China –
 signed February 2012
 ratified by Jersey May 2012
 ratified by Hong Kong June 2013
 in force July 2013
- Qatar –
 signed March 2012
 ratified by Jersey May 2012
 ratified by Qatar November 2012
 in force 22nd November 2012
- Singapore signed October 2012

ratified by Jersey January 2013 ratified by Singapore May 2013 in force – 2nd May 2013

- Guernsey –
 signed January 2013
 ratified by Jersey June 2013
 ratified by Guernsey May 2013
 in force 9th July 2013
- Isle of Man –
 signed January 2013
 ratified by Jersey June 2013
 ratified by the Isle of Man May 2013
 in force 10th July 2013
- Luxembourg
 signed April 2013
 ratified by Jersey July 2013
- 2. DTAs initialled or agreed ready for signing: None
- 3. Jurisdictions where DTA negotiations have been requested/initiated/draft Agreements have been exchanged:
 - Bahrain
 - Botswana
 - Cyprus
 - Ghana
 - Lesotho
 - Malawi
 - Mauritius
 - Nigeria
 - Saudi Arabia
 - Seychelles
 - Swaziland
 - UAE
 - Zambia

Enquiries concerning the above should be directed in the first instance to the Adviser – International Affairs, in the Chief Minister's Department; tel. 44(0)1534 440414; e-mail: c.powell@gov.je.

Adviser – International Affairs 13th March 2014