



## INCOME TAX ACT 1995

### INCOME TAX (RETENTION OF TAX AND EXCHANGE OF INFORMATION) (TEMPORARY TAXATION) ORDER 2005

*Approved by Tynwald : 20<sup>th</sup> April 05  
Coming into operation in accordance with article 1*

In exercise of the powers conferred on the Treasury by section 15 of the Income Tax Act 1995<sup>1</sup>, and of all other enabling powers, the following Scheme is hereby made : -

#### Citation and commencement

1. (1) This Order may be cited as the Income Tax (Retention of Tax and Exchange of Information) Order 2005.
- (2) This Order shall come into operation on the date on which it is approved by Tynwald but shall have effect subject to the provisions of Article 17 of the Agreements.

#### Interpretation and construction

2. (1) In this Order –
  - “Agreement” means a retention agreement or, as the case may be, an exchange agreement, and a reference to “Agreements” shall be construed as a reference to all such Agreements collectively;
  - “the Directive” means Directive 2003/48/EEC of the Council on taxation of savings income;
  - “exchange agreement” means an agreement entered into between the Island and a member State, the provisions of which are the same as those in the Model Agreement set out in Schedule 1;
  - “member States” has the same meaning as in the European Communities (Isle of Man) Act 1973<sup>2</sup>;

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<sup>1</sup> 1995 c.12

<sup>2</sup> 1973 c.14

“retention agreement” means an agreement entered into between the Island and a member State, the provisions of which are the same as those in the Model Agreement set out in Schedule 2.

(2) This Order shall be construed so as to give effect to the Agreements, and expressions used in this Order shall be construed accordingly.

### **Retention by Paying Agents**

3. (1) Interest payments which are made by a paying agent established in the Island to beneficial owners who are residents of a contracting party shall be subject to a retention from the amount of interest payment during the transitional period.

(2) The rate of retention tax shall be –

(a) 15% during the first 3 years of the transitional period;

(b) 20% for the subsequent 3 years; and

(c) 35% thereafter.

(3) This article is subject to article 4 of this Order.

### **Exceptions to Retention Tax**

4. (1) Retention tax shall not be levied where the beneficial owner either –

(a) expressly authorises the paying agent to report to the Assessor of Income Tax all interest payments made by the paying agent to the beneficial owner; or

(b) presents to the paying agent a certificate of exception from retention tax, drawn up in the beneficial owner’s name by the competent authority of the contracting party of residence for tax purposes 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 debt claim giving rise to the interest payment.

(2) A certificate under paragraph (1)(b) shall be valid for a period not exceeding 3 years.

(3) Where an application is made to the Assessor of Income Tax for the issue of a certificate under paragraph (1)(b), the certificate shall be issued within two months following such request.

### **Reporting of information**

5. (1) Where article 4(1)(a) of this Order applies, the paying agent shall report to the Assessor of Income Tax –

(a) the identity and residence of the beneficial owner established in accordance with article 7 of this Order;

- (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 interest payment;
- (d) information concerning the interest payment specified in article 6(1) of this Order.

(2) The report under paragraph (1) shall be made and delivered to the Assessor of Income Tax within 4 months of the end of each income tax year in which interest payments were made by the paying agent to the beneficial owner.

(3) The Assessor of Income Tax shall communicate the information referred to in paragraph (1) to the competent authority of the contracting party of the country of residence of the beneficial owner within 6 months of the end of the relevant income tax year.

### **Basis of assessment for retention tax**

6. (1) A paying agent established in the Island shall levy retention tax as follows –

- (a) in the case of an interest payment within the meaning of Article 8(1)(a) of an Agreement, on the gross amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of sub-paragraph (b) or (d) of Article 8(1) of an Agreement –
  - (i) on the amount of interest or income referred to in sub-paragraph (b) or (d); or
  - (ii) by levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of sub-paragraph (c) of Article 8(1) of an Agreement, on the amount of interest referred to in that sub-paragraph;
- (d) in the case of an interest payment within the meaning of Article 8(4) of an Agreement, on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of the Agreement who meet the conditions of Article 5(1) of the Agreement;
- (e) where a contracting party exercises the option under Article 8(5) of an Agreement on the amount of annualised interest.

(2) For the purposes of paragraph (1)(a) and (b), the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim giving rise to the interest payment.

(3) If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(4) During the transitional period, an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of an Agreement in the another contracting party shall be treated as the paying agent in place of the entity and shall levy the retention tax on that interest,

unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of the Agreement.

### **Identity and residence of beneficial owners**

7. (1) The paying agent making an interest payment shall establish the identity and residence of the beneficial owner in accordance with this article.

(2) In respect of contractual relations entered into before 1 January 2004, the paying agent shall establish the name and address of the beneficial owner, by using such information as is at the disposal of the paying agent, including information available to the paying agent under statutory provisions in force in the Island on the prevention of the use of the financial system for the purpose of money laundering.

(3) In respect of contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the name and address of the beneficial owner and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes.

(4) The details of identity and residence shall be established on the basis of the passport or of an official identity card but this paragraph is subject to paragraph (7).

(5) If the address does not appear on the passport or official identity card, it shall be established on the basis of other documentary proof of identity presented by the beneficial owner.

(6) If the tax identification number is not mentioned on the passport, official identity card or other documentary proof of identity presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of the passport or official identification card.

(7) The residence of a beneficial owner is in the country where the beneficial owner has his permanent address but where an individual presents a passport or official identity card issued by a Member State and declares himself to be resident in a third country, residence shall be established –

- (a) by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident; or
- (b) failing the presentation of such a certificate, the Member State which issued the passport or other official identity document is the country of residence.

(8) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, the agent shall take reasonable steps to establish the identity of the beneficial owner.

### **Retention Tax Revenue sharing**

8. (1) Where retention tax is deducted under this Order, the Treasury shall retain 25% of the amount deducted and transfer the remaining 75% of the retention tax to the other contracting party.

(2) Subject to the provisions of this Order, the portion of retention tax retained by the Treasury shall form part of the General Revenue of the Island.

### **Elimination of double taxation**

9. (1) This article shall apply where the beneficial owner –

- (a) is resident in the Island for tax purposes; and
- (b) is assessable to income tax under the Income Tax Acts of the Isle of Man in respect of an interest payment from which retention tax has been deducted or withheld by a contracting party in accordance with the terms of an Agreement.

(2) The beneficial owner shall be entitled to a tax credit equal to the amount of the tax retained or withheld by the contracting party.

(3) A tax credit under paragraph (2) shall be treated as foreign tax that is eligible for relief in accordance with the provisions of this Order and the Agreements, and no additional relief shall be allowed under section 57 of the Income Tax Act 1970 in respect of that tax.

(4) In calculating a tax credit under this article, only the amount of tax ultimately borne by the beneficial owner shall be taken into account.

(5) Where the tax credit exceeds the amount of income tax due under the Income Tax Acts, the Treasury shall repay the excess amount of the tax credit to the beneficial owner.

(6) A repayment under this article shall not attract repayment supplement under the Income Tax Act 1970.

(7) If in addition to any withholding or retention tax under article 3 of this Order, any interest payment received by the beneficial owner is subject to any other type of withholding or retention tax and a tax credit is granted for such withholding or retention tax in accordance with the Income Tax Acts or any double taxation arrangements, such other withholding or retention tax shall be credited before the procedure in paragraph (2) is applied.

### **Transitional provisions for negotiable debt securities**

**10.** (1) Until 31 December 2010, negotiable debt securities shall not be considered as debt claims.

(2) Paragraph (1) applies in respect of negotiable debt securities –

- (a) that were first issued before 1 March 2001; or
- (b) for which the original issuing prospectuses have been approved before 1 March 2001 by the relevant authorities in member States or third countries.

but only if no further issues of such negotiable debt securities are made on or after 1 March, 2002.

(3) If a further issue is made on or after 1 March 2002 of such a negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, the entire issue of such security, consisting of the original issue and any further issue, shall be treated as a debt claim.

(4) If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer, such further issue shall be treated as a debt claim.

### **Confidentiality**

**11.** Subject to Article 13(3) and (4) of the Agreements, section 106 of the Income Tax Act 1970 shall apply in respect of information received by the Assessor under an Agreement.

## **Transitional Period**

**12.** (1) At the end of the transitional period referred to in Article 14 of an Agreement the retention tax and revenue sharing provided for by this Order shall cease to apply but shall apply in respect of the other contracting parties the automatic exchange of information provisions in accordance with that Article.

(2) If during that transitional period any of the contracting parties makes an election in accordance with Article 14 of an Agreement, the retention tax and the revenue sharing provided for in Article 9 of the Agreement shall no longer apply in respect of the contracting party making that election.

## **Power to Treasury to make regulations**

**13.** (1) The Treasury may make regulations for all or any such purposes of this Order or an Agreement as are necessary for implementing and for dealing with matters arising out of or related to the Agreement.

(2) Without prejudice to the generality of paragraph (1), the regulations may include provision in respect of –

- (a) the payments to which retention tax shall be applied;
- (b) the persons who are to deduct retention tax and the manner and timing of payment to the Treasury;
- (c) the manner and timing of reporting of information to the Assessor and its onward transmission to other competent authorities;
- (d) exceptions to the retention tax procedure;
- (e) the basis of assessment for retention tax;
- (f) beneficial owners and their residence;
- (g) the sharing of retention tax and the administrative provisions for its payment to other competent authorities;
- (h) the elimination of double taxation including procedures for the refund of retention tax;
- (i) appeals;
- (j) the keeping and audit of records and the access of Treasury to those records;
- (k) confidentiality;
- (l) the creation of offences and penalties for contravention of the regulations but not in any event exceeding 6 months custody or a fine of £5,000 or both.

(3) Regulations under this Order shall not come into operation unless they are approved by Tynwald.

## **Protection of person required to deduct tax**

**14.** Any person who deducts and accounts for retention tax or provides information in accordance with this Order or Regulations under article 13 of this Order shall not be treated as in breach of any restriction imposed by statute or otherwise.

**Protection of officer when acting without malice**

**15.** Section 103 of the Income Tax Act 1970 shall apply for the purposes of this Order and Regulations under article 13 of this Order as it applies for the purposes of that Act.

**MODEL AGREEMENT  
THE TAXATION OF SAVINGS INCOME BETWEEN ISLE OF MAN  
AND [EU MEMBER STATES THAT APPLY WITHHOLDING TAX IN THE TRANSITIONAL PERIOD]**

**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 the 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 [the Island] 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 [the Island] is not within the EU fiscal territory.
3. [The Island] 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 [the Island’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. [The Island] has agreed to apply a retention tax with effect from the 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. [The Island] 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 of the Directive.
7. [The Island] 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. The [Island] and [Member State] 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 application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding/ retention tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive;
- (c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding/retention tax levied under this Agreement.

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 [competent authority of the Member State] in respect to [Member State] and [competent authority of the Island] in respect to [the Island].



## **Article 1 Withholding/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 the jurisdiction of a contracting party to beneficial owners within the meaning of Article 5 of this Agreement who are residents of the other contracting party shall, subject to Article 3 of this Agreement, be subject to a withhold/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 withholding/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**

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.

## **Article 3 Exceptions to the Withholding/Retention Tax Procedure**

(1) A contracting party when levying a withholding/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 withholding/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 withholding/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:

- (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
- (b) the name and address of the paying agent;
- (c) 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 the contracting party in which the paying agent is established shall communicate the information referred to in Article 2 of this Agreement to the competent authority of the contracting party of 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 withholding/retention tax**

(1) A paying agent established in a contracting party shall levy withholding/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 sub-paragraph or by levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
- (d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;
- (e) where a contracting party exercises the option under Article 8(5) of this Agreement: on

the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the withholding/retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of withholding/retention tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, the contracting party levying withholding/retention tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding/retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

#### **Article 5 Definition of beneficial owner**

(1) For the purposes of this Agreement, “beneficial owner” shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

- (a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;
- (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment;
- (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph (1)(a) nor (1)(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

#### **Article 6 Identity and residence of beneficial owners**

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs 2 and 3;

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- (a) for contractual relations entered into before the 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10 June 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter’s date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

- (a) for contractual relations entered into before 1 January 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

#### **Article 7 Definition of paying agent**

- (1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
- (2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:
- (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article; or
  - (b) its profits are taxed under the general arrangements for business taxation; or
  - (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

- (3) the entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.
- (4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

- (5) The legal persons exempted from sub- paragraph (a) of paragraph 2 of this Article are
- (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/opet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

#### **Article 8 Definition of interest payment**

- (1) For the purposes of this Agreement "interest payment" shall mean:
- (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);
  - (c) income deriving from interest payments either directly or through an entity referred to in Article 7(2) of this Agreement, distributed by –
    - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
    - or
    - (ii) an equivalent undertaking for collective investment established in [the Island];
    - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
    - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].
  - (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they

invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

- (i) an UCITS authorised in accordance with Directive 85/611/EEC; or
- (ii) an equivalent undertaking for collective investment established in [the Island].
- (iii) entities which qualify for the option under Article 7(3) of this Agreement;
- (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1) (a) and (b) of this Article.

(2) As regards paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1 January 2011 be 25%.

(8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## **Article 9 Withholding/Retention Tax Revenue sharing**

(1) A contracting party which applies withholding/retention tax shall retain 25% of the withholding/retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.

(2) A contracting party levying withholding/retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.

(3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.

(4) A contracting party levying withholding/retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

## **Article 10 Elimination of double taxation**

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding/retention tax to which this Agreement refers in accordance with the following provisions:

- (i) if interest received by a beneficial owner has been subject to withholding/retention tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where

this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the withholding/retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

#### **Article 11 Transitional provisions for negotiable debt securities**

(1) During the transitional period referred to in Article 14 of this Agreement, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1 March, 2002. However, should the transitional period continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses; and,
- where the paying agent as defined in Article 7 of this Agreement is established in a contracting party applying withholding/retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

#### **Article 12 Mutual agreement procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

#### **Article 13 Confidentiality**

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

(3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

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

#### **Article 14 Transitional Period**

At the end of the transitional period as defined in Article 10(2) of the Directive the contracting parties shall cease to apply the withholding/retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period either of the contracting parties elects to apply the automatic exchange of

information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

#### **Article 15 Entry into force**

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1 January 2005.

#### **Article 16 Termination**

- (1) This Agreement shall remain in force until terminated by either contracting party.
- (2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

#### **Article 17 Application and suspension of application**

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.
- (3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

**MODEL AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN ISLE OF MAN AND EU  
MEMBER STATE THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION**

**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 [the Island] 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 [the Island] is not within the EU fiscal territory.

3. [The Island] 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 [the Island’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. [The Island] 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. [The Island] 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. [The Island] 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.

[The Island] and the Member State 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 [Member State] to the competent authority of [the Island] in the same manner as to the competent authority of a Member State;
- (b) the application by [the Island], 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 [the Island] to the competent authority of the [Member State] in accordance with Article 13 of the Directive;
- (d) the transfer by the competent authority of [the Island] to the competent authority of the [Member State] 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 [competent authority of the Member State] in respect to the [Member State] and [competent authority of the Island] in respect to the [the Island].

## **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 [the Island] to beneficial owners within the meaning of Article 5 of this Agreement who are residents of [the Member State] 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 a [the Member State] to beneficial owners, as defined in Article 5 of this Agreement, who are residents of [the Island], 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 Member State] will comply with paragraph 2 of this Article.

(2) Within six months following the end of their tax year, the competent authority of [the Member State] shall communicate to the competent authority of [the Island], 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) [The Island] 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 [the Island] 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 Member State] 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 [the Island] 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 sub-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;
- (c) in the case of an interest payment within the meaning of Article 8(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
- (d) in the case of an interest payment within the meaning of Article 8(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 7(2) of this Agreement who meet the conditions of Article 5(1) of this Agreement;
- (e) where [the Island] exercises the option under Article 8(5) of this Agreement: on the amount of annualised interest.

(2) For the purposes of sub-paragraphs (a) and (b) of paragraph (1) of this Article, the retention tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

(3) The imposition of retention tax by [the Island] shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

(4) During the transitional period, [the Island] may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 7(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the retention tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 7(2) of this Agreement.

#### **Article 5 Definition of beneficial owner**

(1) For the purposes of this Agreement, “beneficial owner” shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

- (a) acts as a paying agent within the meaning of Article 7(1) of this Agreement;
- (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in [the Island], or an entity referred to in Article 7(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment;
- (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph (1)(a) nor (1)(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

#### **Article 6 Identity and residence of beneficial owners**

(1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3).

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- (a) for contractual relations entered into before the 1<sup>st</sup> January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of the 10<sup>th</sup> June, 1991 in the case of [the Member State] or equivalent legislation in the case of [the Island] on prevention of the use of the financial system for the purpose of money laundering;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1<sup>st</sup> January, 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax

purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

- (a) for contractual relations entered into before 1<sup>st</sup> January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [the Member State] or equivalent legislation in the case of [the Island];
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1<sup>st</sup> January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence."

#### **Article 7 Definition of paying agent**

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

- (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article; or
- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in [the Island].

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

- (5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are
- (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

#### **Article 8 Definition of interest payment**

(1) For the purposes of this Agreement "interest payment" shall mean:

- (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

- (c) income deriving from interest payments either directly or through an entity referred to in Article 7(2) of this Agreement, distributed by –
- (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or
  - (ii) an equivalent undertaking for collective investment established in [the Island];
  - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):
- (i) an UCITS authorised in accordance with Directive 85/611/EEC; or
  - (ii) an equivalent undertaking for collective investment established in [the Island].
  - (iii) entities which qualify for the option under Article 7(3) of this Agreement;
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside [the Island].

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1)(a) and (b) of this Article.

- (2) As regards paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 7(2) of this Agreement, such entity not having qualified for the option under Article 7(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph (1)(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph (4) of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph (1) of this Article interest paid or credited to an account of an entity referred to in Article 7(2) of this Agreement which has not qualified for the option under Article 7(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph (1)(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

- (7) The percentage referred to in paragraph (1)(d) of this Article and paragraph (3) of this Article shall from 1 January, 2011 be 25%.
- (8) The percentages referred to in paragraph (1)(d) of this Article and in paragraph (6) of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## **Article 9      Retention Tax Revenue sharing**

- (1) [The Island] shall retain 25% of the retention tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.
- (2) [The Island] levying retention tax in accordance with Article 4(4) of this Agreement shall retain 25% of the revenue and transfer 75% to [the Member State] proportionate to the transfers carried out pursuant to paragraph (1) of this Article.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of [the Island].

(4) [The Island] levying retention tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

#### **Article 10 Elimination of double taxation**

(1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by [the Island] of the retention tax to which this Agreement refers in accordance with the following provisions –

(i) if interest received by a beneficial owner has been subject to retention tax in [the Island], the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

(ii) if, in addition to the retention tax referred to in Article 4 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding/retention tax and the contracting party of residence for tax purposes grants a tax credit for such withholding/retention tax in accordance with its national law or double taxation conventions, such other withholding/retention tax shall be credited before the procedure in sub-paragraph (i) of this Article is applied.

(2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the retention tax referred to in Article 1 of this Agreement.

#### **Article 11 Transitional provisions for negotiable debt securities**

(1) During the transitional period referred to in Article 14 of this Agreement, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before the 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 8(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses and;

- where the paying agent is established in a contracting party applying retention tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 8(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

#### **Article 12 Mutual agreement procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

#### **Article 13 Confidentiality**

(1) All information provided and received by the competent authority of a contracting party shall be kept confidential.

(2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.

- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

#### **Article 14 Transitional Period**

At the end of the transitional period as defined in Article 10(2) of the Directive, [the Island] shall cease to apply the retention tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. If during the transitional period [the Island] elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding/retention tax and the revenue sharing provided for in Article 9 of this Agreement.

#### **Article 15 Entry into force**

Subject to the provisions of Article 17 of this Agreement, this Agreement shall come into force on 1 January 2005.

#### **Article 16 Termination**

- (1) This Agreement shall remain in force until terminated by either contracting party.
- (2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

#### **Article 17 Application and suspension of application**

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) The contracting parties shall decide, by common accord, at least six months before the date referred to in Article 15 of this Agreement, whether the condition set out in paragraph (1) will be met having regard to the dates of entry into force of the relevant measures in the Member States, the named third countries and the dependent or associated territories concerned.
- (3) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (4) Subject to the mutual agreement procedure provided for in Article 12 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

Made this 9th day of March 2005

Minister for the Treasury

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EXPLANATORY NOTE  
*(This note is not part of the Order)*

This Temporary Taxation Order provides the necessary legislative framework to enable the Isle of Man to honour its commitment to the requirements of the European Savings Directive 2003/48/EEC. It will enable the 25 bilateral agreements with the Member States to be enacted.

It provides for paying agents to retain appropriate rates of retention tax and for the payment to Treasury and the forwarding of the relevant percentage to each Member State.

It also provides for investors to choose an option of exchange of information where they wish, rather than having retention tax deducted at source.

Where investors have retention tax levied on interest their anonymity is fully protected.