

**--COPY OF--**  
**Notification No. 30/2012**  
**Dated 9-8-2012**

**Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for Exchange of Information with respect to Taxes with Guernsey**

Whereas, an Agreement between the Government of the Republic of India and the States of Guernsey for the exchange of information with respect to taxes was signed at London on the 20th day of December, 2011 (hereinafter referred to as the said Agreement)

And whereas, the date of entry into force of the said Agreement is the 11th day of June, 2012, being the date of the later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of article 14 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the Agreement between the Government of the Republic of India and the States of Guernsey for the exchange of information with respect to taxes, as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the 11th June, 2012, that is, the date of entry into force of the said Agreement.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF INDIA**  
**AND**  
**THE STATES OF GUERNSEY**  
**FOR**  
**THE EXCHANGE OF INFORMATION**  
**WITH RESPECT TO TAXES**

Whereas the Government of the Republic of India and the States of Guernsey (the “Contracting Parties”), desiring to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

Whereas it is acknowledged that the States of Guernsey 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 with the Government of the Republic of India;

Now, therefore, the Contracting Parties 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 Contracting Parties, through their competent authorities, 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. 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**

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Party. However, a requested Party is not obliged to provide information which is neither held by its authorities nor is in the possession of, or in the control of, or obtainable by, persons who are within its territorial jurisdiction.

## Article 3

### **Taxes Covered**

1. The taxes which are the subject of this Agreement are:

(a) in India, taxes of every kind and description imposed by the Central Government or the Governments of political sub-divisions or local authorities, irrespective of the manner in which they are levied;

(b) in Guernsey, taxes of every kind and description imposed by the States of Deliberation.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Contracting Party pursuant to this Agreement.

## Article 4

### **Definitions**

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

- (a) “India” means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands in accordance with international law;
- (c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means
- (i) in the case of India, the Finance Minister, Government of India, or its authorized representative;
  - (ii) in the case of Guernsey, the Director of Income-tax or his delegate;
- (f) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws or the laws relating to taxes covered by this Agreement of the requesting Party;
- (g) “information” means any fact, statement, document or record in whatever form;
- (h) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the requested information;
- (i) “person” includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;
- (j) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (k) “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;
- (l) “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;
- (m) “recognised stock exchange” means

(i) in India, the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognised by the Securities and Exchange Board of India;

(ii) in Guernsey, the Channel Islands Stock Exchange; and

(iii) any other stock exchange which the competent authorities agree to recognise for the purposes of this Agreement;

(n) “requested Party” means the Contracting Party which is requested to provide information, or which has provided information;

(o) “requesting Party” means the Contracting Party submitting a request for information to, or having received information from, the requested Party;

(p) “tax” means any tax to which this Agreement applies.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 12 of this Agreement, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## Article 5

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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

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

4. Each Contracting Party shall ensure that it has the authority, in accordance with the terms of this agreement, to obtain and provide, through its competent authority, upon request:

(a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;

(c) in the case of collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in the case of entities that are neither trusts nor foundations.

5. 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.

6. 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;

(b) the period for which the information is requested;

(c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;

(d) the tax purpose for which the information is sought;

(e) grounds for believing that the information requested is present in the requested Party or is in the possession of, or is in the control of, or obtainable by, a person within the jurisdiction of the requested Party;

(f) to the extent known, the name and address of any person believed to be in possession or in control of or able to obtain the requested information;

(g) a statement that the request is in conformity with the laws 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;

(h) 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.

7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information as promptly as possible to the requesting Party.

Article 6

## **Tax Examinations Abroad**

1. At the request of the competent authority, of the requesting Party, made at least 14 days in advance, the requested Party may allow representatives of the competent authority of the requesting Party to enter the territory, of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party, in which case the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

## Article 7

### **Possibility of Declining a Request for Information**

1. The competent authority of the requested Party may decline to assist:

(a) where the request is not made in conformity with this Agreement; or

(b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

(c) where disclosure of the information would be contrary to public policy (ordre public) of the requested Party.

2. This Agreement shall not impose on a requested Party the obligation:

(a) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph; or

(b) to obtain or provide information subject to legal privilege as provided for under the domestic law of the relevant Contracting Party; or

(c) to carry out administrative measures at variance with its laws and administrative practices, provided nothing in this sub-paragraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5.

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

4. The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the

administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.

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 or citizen of the requested party as compared with a national or citizen of the requesting Party in the same circumstances.

## Article 8

### **Implementation Legislation**

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

## Article 9

### **Confidentiality**

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

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) 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.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## Article 10

### **Costs**

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise necessary to comply with the request) shall, if they exceed \$ US 500, be borne by the requesting Party.

2. The competent authorities will consult each other, in advance, in any particular case where extraordinary costs are likely to exceed \$ US 500 to determine whether the requesting Party will continue to pursue the request and bear the cost.

3. The competent authorities shall consult from time to time with regard to this Article.

Article 11

### **Language**

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

Article 12

### **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement. In addition, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 10 of this Agreement.
2. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching agreement under this Article.

Article 13

### **Protocol**

The attached Protocol shall be an integral part of this Agreement.

Article 14

### **Entry into Force**

1. The Contracting Parties shall notify each other in writing of the completion of their procedures for entry into force of this Agreement.
2. This Agreement shall enter into force on the date of receipt of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith:
  - (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**

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may, after the expiry of two years from the date of its entry into force, terminate this Agreement by serving a written notice of termination to the other Contracting Party through appropriate channels.



3. 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 received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement.

4. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 9 with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at London on this Twentieth day of December, 2011, each in the Hindi, and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

### **Protocol**

The Government of the Republic of India and the States of Guernsey (the “Contracting Parties”) have agreed at the signing of the Agreement between the two Governments for the Exchange of Information with respect to Taxes on the following provisions which shall form an integral part of the said Agreement:

(1) The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organization for Economic Cooperation and Development (OECD Model Agreement) when interpreting provisions of the Agreement that are identical to the provisions in that OECD Model Agreement.

(2) For the purpose of paragraph 7 of Article 5, it is understood that the competent authority of the requested Party shall:

(a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;

(b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

(3) The term “extraordinary costs” in Article 10 of the agreement shall be interpreted as follows:

(a) Examples of “extraordinary costs” include, but are not limited to, the following:

(i) reasonable costs of reproducing and transporting documents or records to the Competent Authority of the requesting Party;

(ii) reasonable fees imposed by a financial institution or other third party record keeper for copying records and research related to a specific request for information;

(iii) reasonable costs for stenographic reports of interviews, depositions or testimony;

(iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in India or Guernsey for an interview, deposition or testimony relating to a particular information request; and

(v) reasonable legal fees for non-government counsel appointed or retained with approval of the Competent Authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;

(b) “extraordinary costs” do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

DONE in duplicate at London on this Twentieth day of December, 2011, each in the Hindi, and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.