

2005 No. 1459

INCOME TAX

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

Made - - - - - *7th June 2005*

At the Court at Buckingham Palace, the 7th day of June 2005

Present,

The Queen's Most Excellent Majesty in Council

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

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

Citation

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

Declaration about exchange of information

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

- (a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax; and
- (b) the laws of Montserrat concerning taxes imposed by Montserrat which are of a similar character to any of those taxes.

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

A. K. Galloway
Clerk of the Privy Council

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

SCHEDULE

PART 1

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN MONTSERRAT AND THE UNITED KINGDOM

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 Montserrat with the EU is set out in part 4 of the Treaty Establishing the European Community. Under the terms of the Treaty, Montserrat is not within the EU fiscal territory.

3. Montserrat 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. Montserrat has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive.

5. Montserrat 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.

Montserrat and the United Kingdom 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 the automatic exchange of information between the contracting parties in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

For the purposes of this Agreement the term ‘competent authority’ when applied to the contracting parties means the Commissioners of Inland Revenue or their authorised representative with respect to the United Kingdom and the Inland Revenue Department with respect to Montserrat.

ARTICLE 1

Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 5 of this Agreement, are made by a paying agent established in either contracting party to beneficial owners, as defined in Article 2 of this Agreement, who are residents of the other contracting party, the paying agent shall report to its competent authority;

- (a) the identity and residence of the beneficial owner established in accordance with Article 3 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 in accordance with paragraph 2 of Article 8 of the Directive; 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 amount of the proceeds from sale, redemption or refund.

And the contracting parties will comply with paragraph 2 of this Article.

(2) Within six months following the end of their tax year, the competent authority of the contracting parties shall communicate to the competent authority of the other contracting party, automatically, the information referred to in paragraph (1) (a)–(d) of this Article, for all interest payments made during that year.

ARTICLE 2

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 4(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 Montserrat, or an entity referred to in Article 4(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 3

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 1st 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 10th June, 1991 in the case of the United Kingdom or equivalent legislation in the case of Montserrat 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 1st 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 1st 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 United Kingdom or equivalent legislation in the case of Montserrat;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1st 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 4

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 Montserrat.

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 yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag;
- (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

ARTICLE 5

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 payments shall not be regarded as interest payments;
- (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 4(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 Montserrat;
 - (iii) entities which qualify for the option under Article 4(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 Montserrat.

(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 Montserrat.
- (iii) entities which qualify for the option under Article 4(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 Montserrat.

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 4(2) of this Agreement, such entity not having qualified for the option under Article 4(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 4(2) of this Agreement which has not qualified for the option under Article 4(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 6

Transitional provisions for negotiable debt securities

(1) During the transitional period referred to in Article 10 of the Directive, 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 5(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1 March 2002.

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 5(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 5(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 7

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 8

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 the 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 9

Entry into force

This agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been compiled with, and its provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.

ARTICLE 10

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 11

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) Subject to the mutual agreement procedure provided for in Article 7 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.

(3) Subject to the mutual agreement procedure provided for in Article 7 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.

Annex: List of related entities

For the purposes of Article 6 of this Agreement, the following entities will be considered to be a “*related entity acting as a public authority or whose role is recognised by an international treaty*”:

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

Vlaams Gewest (Flemish Region)
Région wallonne (Walloon Region)
Région bruxelloise/Brussels Gewest (Brussels Region)
Communauté française (French Community)
Vlaamse Gemeenschap (Flemish Community)
Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

Xunta de Galicia (Regional Executive of Galicia)
Junta de Andalucía (Regional Executive of Andalusia)
Junta de Extremadura (Regional Executive of Extremadura)
Junta de Castilla— La Mancha (Regional Executive of Castilla— La Mancha)
Junta de Castilla— León (Regional Executive of Castilla— León)
Gobierno Foral de Navarra (Regional Government of Navarra)
Govern de les Illes Balears (Government of the Balearic Islands)
Generalitat de Catalunya (Autonomous Government of Catalonia)
Generalitat de Valencia (Autonomous Government of Valencia)
Diputación General de Aragón (Regional Council of Aragon)
Gobierno de las Islas Canarias (Government of the Canary Islands)
Gobierno de Murcia (Government of Murcia)
Gobierno de Madrid (Government of Madrid)
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
Diputación Foral de Alava (Regional Council of Alava)
Ayuntamiento de Madrid (City Council of Madrid)
Ayuntamiento de Barcelona (City Council of Barcelona)
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
Cabildo Insular de Tenerife (Island Council of Tenerife)
Instituto de Crédito Oficial (Public Credit Institution)
Instituto Catalán de Finanzas (Finance Institution of Catalonia)
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

La Caisse d’amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
L’Agence française de développement (AFD) (French Development Agency)
Réseau Ferré de France (RFF) (French Rail Network)
Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
Charbonnages de France (CDF) (French Coal Board)
Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

Italy

Regions
Provinces
Municipalities
Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

Pašvaldības (Local governments)

Poland

gminy (communes)
powiaty (districts)
województwa (provinces)
związki gmin (associations of communes)
powiatów (association of districts)
województw (association of provinces)
miasto stołeczne Warszawa (capital city of Warsaw)
Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

Região Autónoma da Madeira (Autonomous Region of Madeira)
Região Autónoma dos Açores (Autonomous Region of Azores)
Municipalities

Slovakia

mestá a obce (municipalities)
Železnice Slovenskej republiky (Slovak Railway Company)
Štátny fond cestného hospodárstva (State Road Management Fund)
Slovenské elektrárne (Slovak Power Plants)
Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Social Development Fund
EURATOM
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 6 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD COUNTRIES:

The entities that meet the following criteria:

- (1) The entity is clearly considered to be a public entity according to the national criteria.
- (2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.

- (3) Such public entity is a large and regular issuer of debt.
- (4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

PART II

Exchange of Notes

Note from Her Majesty's Government

Sir,

I refer to the text of the proposed model "Agreement on the Taxation of Savings Income between the United Kingdom Overseas Territory of Montserrat and [EU Member State that is to apply automatic exchange of information]" that was approved at the High Level Working Party (Taxation of Savings) of the Council of Ministers of the European Union of 22 June 2004 .

In view of the above mentioned text, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Montserrat, I have the honour

- to propose to you the arrangements contained in the Agreement on the taxation of savings income at Appendix 1 to this letter;
- to propose that the said arrangements may come into effect on the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which date shall be subject to the conditions set out in Article 17(2) of the Directive, subject to the notification to each other that the internal constitutional formalities for the coming into effect of these arrangements are completed;
- to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the arrangements between the United Kingdom and Montserrat.

Please accept, Sir, the assurance of our highest consideration,

Bill Rammell

Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs

For the Government of the United Kingdom

Done in London on 22 July 2004 in three copies.

Note from the Government of Montserrat

Sir,

I have the honour to acknowledge receipt of your letter of 22 July 2004, which reads as follows:

"Sir,

I refer to the text of the proposed model "Agreement on the Taxation of Savings Income between the United Kingdom Overseas Territory of Montserrat and [EU Member State that is to apply automatic exchange of information]" that was approved by the High Level Working Party (Taxation of Savings) of the Council of Ministers of the European Union on 22 June 2004.

In view of the above mentioned text, and respecting the constitutional relationship between the United Kingdom of Great Britain and Northern Ireland and Montserrat, I have the honour

- to propose to you the arrangements contained in the Agreement on the taxation of savings income at Appendix 1 to this letter;
- to propose that the said arrangements may come into effect on the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which date shall be subject to the conditions set out in Article 17(2) of the Directive, subject to the notification to each other that the internal constitutional formalities for the coming into effect of these arrangements are completed;
- to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the arrangements between the United Kingdom and Montserrat.

Please accept, Sir, the assurance of our highest consideration”

I am able to confirm that the Government of Montserrat is in agreement with the contents of your letter dated 22 July 2004.

Please accept, Sir, the assurance of my highest consideration,

John A Osborne

Chief Minister

For the Government of Montserrat

Done in Montserrat on 16 December 2004 in three copies.

EXPLANATORY NOTE

(This note is not part of the Order)

The Tax Information Exchange Agreement between the United Kingdom and Montserrat is set out in the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Agreement contained in Part I, and the exchange of letters contained in Part II of the Schedule to the Order, and that it is expedient that those arrangements should have effect.

The Tax Information Exchange Agreement secures application in Montserrat of the same measures as are contained in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (“the Directive”). It is based on a model reflecting the provisions of the Directive, which was drawn up by the Government of Montserrat for all Member States, discussed by those Member States and approved by the EU Council of Ministers.

The Agreement constitutes a reciprocal arrangement between the United Kingdom and Montserrat for the exchange of information on savings income in the form of interest payments made cross-border from one Party to individuals resident in the other Contracting Party.

As the Agreement enshrines all the measures corresponding to the Directive, it provides not only for the exchange arrangements between competent authorities but also the details of the mechanisms to be followed by paying agents for the identification of individual owners, and for collecting the information to be exchanged.

The detailed provisions of the Agreement are as follows.

Article 1 sets out the categories of information to be exchanged automatically.

Articles 2–6 provide the definitions corresponding to those in the Directive of beneficial owner, paying agent and interest.

Article 7 provides for a consultation procedure, in the event of any disagreement between the parties as to the interpretation of the Agreement and Article 8 sets out the confidentiality provisions concerning the information.

Articles 9–11 deal with commencement and the conditions for application of the Agreement.

The Agreement will enter into force on the thirtieth day after the date of the later of the notifications by each country of the completion of its legislative procedures or the date of application of the Directive, 1st July 2005, whichever is later. The date of entry into force will in due course be published in the *London*, *Edinburgh* and *Belfast* Gazettes.

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INCOME TAX

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