

TAX INFORMATION EXCHANGE AGREEMENT OF 29TH OCTOBER, 2008

United Kingdom

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas –

the United Kingdom and the Virgin Islands (“the parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

the parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

the Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and have subsequently actively participated in the OECD Global Forum on Taxation;

the parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have concluded the following Agreement which contains obligations on the part of the parties only.

ARTICLE 1 SCOPE OF AGREEMENT

The competent authorities of the parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2 JURISDICTION

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested party—

- (a) without regard to whether the person to whom the information relates is a resident of a party, or whether the person by whom the information is held is a resident of a party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested party.

ARTICLE 3 TAXES COVERED

1. The taxes covered by this Agreement are—
 - (a) in the case of the United Kingdom,
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax;
 - (iv) the inheritance tax; and
 - (v) the value added tax
 - (b) in the case of the Virgin Islands,
 - (i) the income tax;
 - (ii) the payroll tax; and
 - (iii) the land and house tax

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1 of this Article. The competent authorities of the parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4 DEFINITIONS

1. In this Agreement unless the context otherwise requires -
 - (a) “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;
 - (b) “Virgin Islands” means the territory of the Virgin Islands;
 - (c) “citizen” means –
 - (i) in relation to the United Kingdom, any person who is a British citizen otherwise than by virtue of a connection with the Virgin Islands, or is a British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;
 - (ii) in relation to the Virgin Islands, any person who belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Virgin Islands;

- (d) “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
- (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) “competent authority” means
 - (i) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (ii) in the case of the Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other laws;
- (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;
- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a party to obtain and provide the requested information;
- (k) “party” means the United Kingdom or the Virgin Islands as the context requires;
- (l) “person” includes an individual (“natural person”), a company, or any other body or group of persons;
- (m) “public collective investment scheme” means any collective scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;
- (p) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that party, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

ARTICLE 5 EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a requested party shall provide upon request in writing by the requesting party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested party if it occurred in the territory of the requested party. If the information received by the competent authority of the requested party is not sufficient to enable it to comply with the request for information, it shall advise the

competent authority of the requesting party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for the information, the requested party shall use all relevant information gathering measures 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 party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide 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 ownership of companies, partnerships and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and 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. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the parties to obtain or provide—

- (i) 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;
- (ii) information relating to a period more than six years prior to the tax period under consideration;
- (iii) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

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 this Agreement in order 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 and type of the information requested, including a description of the specific evidence sought and the form in which the requesting party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the requested party or is in the possession or control of a person subject to the jurisdiction of the requested party;

- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a declaration that the request is in conformity with this Agreement and the laws and administrative practices of the requesting party, and that if the requested information were 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;
- (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 forward the requested information as promptly as possible to the competent authority of the requesting party. To ensure a prompt response—

- (a) the competent authority of the requested party shall confirm the 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 any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, or for its refusal.

ARTICLE 6 TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. The requested party may, to the extent permitted under its domestic laws, and following reasonable notice from the requesting party, allow representatives of the competent authority of the requesting party to enter the territory of the requested party in connection with a request to interview persons and examine records with the prior written consent of the 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 meeting with the persons concerned.

2. At the request of the competent authority of the requesting party, the competent authority of the requested party may, in accordance with its domestic laws, permit representatives of the competent authority of the requesting party to be present at the appropriate part of a tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 of this Article is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination in accordance with its domestic laws.

ARTICLE 7 POSSIBILITY OF DECLINING A REQUEST

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 difficulties; or
- (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.

2. The provisions of this Agreement shall not impose upon a party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. (a) The provisions of this Agreement shall not impose on a party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are—
- (i) produced for the purposes of seeking or providing legal advice, or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
- (b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

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

5. The requested party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting party, the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

6. 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 resident or citizen of the requested party as compared with a resident or citizen of the requesting party in the same circumstances.

ARTICLE 8 CONFIDENTIALITY

1. All information provided and received by the competent authorities of the parties shall be kept confidential and 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 or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested party.

3. Information provided to a requesting party shall not be disclosed to any other jurisdiction.

ARTICLE 9

SAFEGUARDS

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party. However, these rights and safeguards may not be applied by the requested party in a manner that unduly prevents or delays effective exchange of information.

ARTICLE 10 ADMINISTRATIVE COSTS

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities in a Memorandum of Understanding.

ARTICLE 11 MUTUAL AGREEMENT PROCEDURE

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

ARTICLE 12 ENTRY INTO FORCE

Each of the parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The provisions of this Agreement shall have effect—

- (a) with respect to criminal tax matters upon the entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force of this Agreement.

ARTICLE 13 TERMINATION

1. This Agreement shall remain in force until terminated by either party.
2. Either party may terminate this Agreement by giving notice of termination in writing. Such terminations shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party.
3. If the Agreement is terminated the parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.