

# TAX INFORMATION EXCHANGE AGREEMENT OF 3<sup>RD</sup> APRIL, 2002

## United States

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

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, (“the parties”), desiring to facilitate the exchange of information relating to taxes, have agreed as follows:

### Article 1

#### Scope of the Agreement

The competent authorities of the parties shall provide assistance through exchange of information relating to the administration and enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that may be relevant to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax evasion in relation to such persons. The territorial scope of this Agreement, in respect of the United Kingdom, is the territory of the British Virgin Islands.

### 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 or national of a party, or whether the person by whom the information is held is a resident or national 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

The taxes covered by this Agreement are in the case of the United States of America, federal income taxes; and in the case of the British Virgin Islands, such taxes as may, from time to time, be imposed by law; provided that the types of tax covered may be extended by agreement between the competent authorities in the form of an exchange of letters.

### Article 4

#### Definitions

In this Agreement –

“competent authority” means, for the United States of America, the Secretary of the Treasury or his delegate, and for the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;

“criminal tax evasion” means wilfully, with dishonest intent to defraud the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred. The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability, and the conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either party. The competent authorities shall agree on the scope and extent of matters falling within this definition;

“information” means any fact, statement, document or record in whatever form;

“information gathering measures” means judicial, regulatory or administrative procedures enabling a requested party to obtain and provide the information requested;

“items subject to legal privilege” means:

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made –
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the items are in the possession of a person who is entitled to possession of them.

Items held with the intention of furthering a criminal purpose are not subject to legal privilege, and nothing in this Article shall prevent a professional legal adviser from providing the name and address of a client where doing so would not constitute a breach of legal privilege;

“person” means a natural person, a company or any other body or group of persons;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“tax” means any tax covered by this Agreement.

## **Article 5**

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

1. The competent authority of the 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 with suggestions of the additional information 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 information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, 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 beneficial ownership of companies, partnerships and other persons.

5. 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 relevance of the information sought to the request:

- (a) the name of the authority seeking the information or conducting the investigation or proceeding to which the request relates;
- (b) the identity of the taxpayer under examination or investigation;
- (c) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought;
- (d) the tax purposes for which the information is sought;
- (e) the period of time with respect to which the information is requested;
- (f) 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 and may be relevant to the tax purposes of the request;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under this Agreement.

6. 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, 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 any deficiencies in the request within 60 days of receipt of the request;

- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within a reasonable period relative to the nature 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 to explain the reasons for its inability or the obstacles or its refusal.

## **Article 6**

### **Tax Examinations (or Investigations) Abroad**

1. The requested party may, to the extent permitted under its domestic laws, 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 permit representatives of the competent authority of the requesting party to be present when a tax examination is being carried out in the territory of the requested party.
3. If the request referred to in paragraph 2 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.

## **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;
  - (b) where the requesting party has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.
2. This Agreement shall not impose upon a party any obligation to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.
3. 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.
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:
  - (a) under its own laws for the purpose of the enforcement of its own tax laws; or
  - (b) in response to a valid request from the requested party under this Agreement.

**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 judicial, administrative and, in the case of the United States, Congressional oversight authorities or, in the case of the British Virgin Islands, a select committee of the Legislative Council) officially concerned with the purposes specified in Article 1, 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.

2. Except as provided in paragraph 1, information provided under this Agreement shall not be disclosed to any third party.

**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, provided and to the extent that these are not so burdensome or time-consuming as to act as impediments to access to the information.

**Article 10**  
**Administration Costs or Difficulties**

1. The requesting party shall reimburse the requested party for direct out of pocket costs of processing each request (including direct out of pocket costs of litigation directly relating to such request), as agreed by the parties.

2. In the event that compliance with the obligations under this Agreement occasions undue difficulty for either party, either as a result of the number or complexity of requests, the respective competent authorities shall consult with a view to resolving the difficulty under Article 11.

**Article 11**  
**Mutual Agreement Procedure**

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

**Article 12**  
**Entry Into Force**

1. This Agreement shall enter into force when each party has notified the other of the completion of its necessary internal procedures for entry into force. Upon entry into force, it shall have effect for criminal tax evasion beginning on 1 January 2004, and with respect to all other matters covered in Article 1 beginning on 1 January 2006.

2. Upon entry into force, the provisions of the Agreement shall have effect with respect to criminal tax evasion for taxable periods commencing from 2004, and shall have effect with respect to all other matters for taxable periods commencing from 2006.

**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 termination 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. A party which terminates this Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.