

**ARRANGEMENT
BETWEEN
THE STATES OF GUERNSEY
AND
BERMUDA
FOR THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS**

WHEREAS the States of Guernsey and Bermuda recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

WHEREAS the Parties wish to enter into an Arrangement that respects the constitutional relationship between the Parties;

WHEREAS it is acknowledged that the Parties have the ability to enter into a tax exchange arrangement with each other in accordance with that constitutional relationship;

WHEREAS the Parties have entered into a political commitment to the OECD's principles of effective exchange of information;

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

NOW, therefore, the Parties have agreed to conclude the following Arrangement which contains obligations on the part of the Parties only:

Paragraph 1
Scope of the Arrangement

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Arrangement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

Paragraph 2
Taxes Covered

1. This Arrangement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Bermuda:

The existing taxes which are the subject of this Arrangement are direct taxes of every kind and description;
 - (b) in the case of Guernsey:
 - (i) income tax;
 - (ii) dwellings profits tax.
2. This Arrangement shall apply also to any identical taxes imposed after the date of signature of the Arrangement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Arrangement.

Paragraph 3
Definitions

1. In this Arrangement:

- (a) “Bermuda” means the Islands of Bermuda;
- (b) “Guernsey” means the States of Guernsey and, when used in a geographical context, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- (c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) “competent authority” means:
 - in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;
 - in the case of Guernsey, the Director of Income Tax or his delegate;
- (e) “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (f) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Arrangement which is liable to prosecution under the criminal laws 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 enabling a requested Party to obtain and provide the information requested;

- (i) “Party” means Bermuda or Guernsey, as the context requires;
 - (j) “person” means a natural person, a company or any other body or group of persons;
 - (k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - (l) “public collective investment scheme” means any 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;
 - (m) “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;
 - (n) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties. The stock exchanges of the Parties are also agreed upon by the competent authorities of the Parties to be a recognised stock exchange;
 - (o) “requested Party” means the Party to this Agreement which is requested to provide or has provided information or assistance in response to a request;
 - (p) “requesting Party” means the Party to this Arrangement submitting a request for or having received information or assistance from the requested Party;
 - (q) “tax” means any tax covered by this Arrangement.
2. As regards the application of this Arrangement 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 laws 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.

Paragraph 4
Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Paragraph 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Paragraph when it is unable to obtain the requested information by other means within its own territory, 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 at its own discretion 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 Paragraph, 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 it has the authority, subject to the terms of Paragraph 1, to obtain and provide, through its competent authority and 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) (i) information regarding the beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
- (ii) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries,

provided that this Arrangement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:
- (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) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this subparagraph;
 - (f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
 - (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;

- (h) 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 Arrangement;
 - (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.
6. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. 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 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 complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information it shall immediately inform the competent authority of the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Paragraph 5

Tax Examinations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party 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 permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party, to the extent permitted under its domestic laws.
3. If the request referred to in subparagraph 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.
4. For the purposes of this Paragraph the term “domestic laws” refers to laws or instruments governing entry into, or exit from, the territories of the Parties.

Paragraph 6
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 Arrangement;
 - (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 the disclosure of the information requested would be contrary to public policy.
2. This Arrangement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Paragraph 4, subparagraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.
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 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.
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.

Paragraph 7
Confidentiality

1. All information provided and received by the competent authorities of the 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 Paragraph 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 Paragraph 1 without the express written consent of the competent authority of the requested Party.
4. Information provided to a requesting Party under this Arrangement may not be disclosed to any other jurisdiction without the express written consent of the competent authority of the requested Party.

Paragraph 8
Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Paragraph, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Paragraph 9
Language

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

Paragraph 10
Mutual Agreement Procedures

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Arrangement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in subparagraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Paragraphs 4, 5 and 8.

Paragraph 11
No Prejudicial or Restrictive Measures

1. A Party shall not apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or citizens of the other Party so long as this Arrangement is in force and effective.
2. For the purposes of this Paragraph, “prejudicial or restrictive measures based on harmful tax practices” means measures applied by one Party to residents, nationals or citizens of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes.
3. Without limiting the generality of subparagraph 2 the term “prejudicial or restrictive measures” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

Paragraph 12
Entry into Force

This Arrangement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Paragraph 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.

Paragraph 13
Termination

- 1. This Arrangement shall remain in force until terminated by either Party.
- 2. Either Party may terminate this Arrangement by giving notice of termination in writing through appropriate channels. Such termination shall become effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Arrangement.
- 3. If the Arrangement is terminated the Parties shall remain bound by the provisions of Paragraph 7 with respect to any information obtained under this Arrangement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed the Arrangement.

DONE in duplicate at _____ this _____ day of _____ 2013,
and at _____ this _____ day of _____ 2013, in the English
language.

For the States of Guernsey

For Bermuda