

AGREEMENT

BETWEEN

THE COMMONWEALTH OF THE BAHAMAS

AND

THE KINGDOM OF BELGIUM

FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

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THE KINGDOM OF BELGIUM,

WHEREAS the Government of the Commonwealth of The Bahamas and the Government of the Kingdom of Belgium (“the Parties”) have long been active in international efforts to combat money laundering and other financial crimes, including the targeting of terrorist financing;

AND WHEREAS The Bahamas on 15th March 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

AND WHEREAS the Parties, desiring to facilitate the exchange of information with respect to taxes;

HAVE AGREED as follows:

Article 1

Object and Scope of the Agreement

1. The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, 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. 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.
2. 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 any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

Article 2

Jurisdiction

A requested Party is not obliged to provide information which is neither held by its authorities, nor in the possession of, nor obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. This Agreement shall apply to the existing taxes of every kind and description imposed by or on behalf of the Parties.
2. This Agreement shall apply also 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 if the Parties, through their competent authorities, so agree. The competent authority of each Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.
3. This Agreement shall also apply to taxes imposed in Belgium by its political subdivisions or local authorities, from the date on which Belgium shall notify The Bahamas through diplomatic channels that Belgium agrees on such application.

Article 4

Definitions

1. In this Agreement:
 - a) “The Bahamas” means the Commonwealth of The Bahamas, encompassing the land, the territorial waters, and in accordance with international law and the laws of The Bahamas any area outside the territorial waters inclusive of the exclusive economic zone and the seabed and subsoil over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources;
 - b) “Belgium” means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
 - c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
 - d) “public collective investment fund or scheme” means any collective investment 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;
 - 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 Bahamas, the Minister of Finance or his duly authorised delegate; and
 - (ii) in the case of Belgium, the Minister of Finance or his authorised representative;
 - g) “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;
 - h) “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 of the requesting Party;
 - i) “information” means any fact, statement, document or record in whatever form;
 - j) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
 - k) “national”, in relation to a Party, means:
 - (i) any individual possessing the nationality or citizenship of that Party, and
 - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in that Party;
 - l) “person” means an individual, a company or any other body or group of persons;

- m) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - n) “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;
 - o) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
 - p) “requested Party” means the Party to this Agreement which is requested to provide information or has provided information in response to a request;
 - q) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;
 - r) “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 herein 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 the requested Party shall provide upon request by the requesting Party 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 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 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 appropriate 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. Notwithstanding any contrary provisions in its domestic laws, each Party shall have the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and to provide:
 - a) information held by banks, other financial institutions, trusts, foundations and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and
 - (i) 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 and beneficiaries;
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
 - (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).

Provided that this Agreement does not create an obligation on the 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.

5. Any request for information shall be formulated with the greatest possible details and shall specify in writing:
 - a) the identity of the taxpayer under examination or investigation;
 - b) the identity of the person in respect of whom information is requested, if that person is not also the taxpayer in subparagraph (a) of this paragraph;
 - c) the period for which the information is requested;
 - d) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
 - e) the tax purpose for which the information is sought, including:
 - (i) the citation of the legal authority under the applicant Party's tax law with respect to which the information is sought; and
 - (ii) whether the matter is a criminal tax matter;
 - f) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the taxes of the requesting Party covered under Article 3, with respect to a person identified in subparagraph (a) of this paragraph;
 - g) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
 - h) to the extent known, the name and address of any person believed to be in possession of, or able to obtain the requested information;

- i) a statement that the request is in conformity with this Agreement;
 - j) 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 difficulty.
6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party, advise if there are any unexpected delays in obtaining the requested information and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

Article 6

Tax Examinations Abroad

1. The competent authority of the requesting Party may request that the competent authority of the requested Party allows, provided that it is not contrary to domestic laws, representatives of the competent authority of the requesting Party to enter the territory of the requested Party 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 give reasonable notice to 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 attend a tax examination 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 tax 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 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 its national security or public policy.

2. This Agreement shall not impose on a requested Party any obligation to provide information subject to legal privilege or to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as 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 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 of the requested Party as compared with a national of the requesting Party in the same circumstances.

Article 8

Confidentiality

1. Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction (including a foreign Government) without the express written consent of the competent authority of the requested Party.
2. Where information provided pursuant to this Agreement for a criminal tax purpose is, subsequently, to be used for a non-criminal tax purpose (and vice versa), the competent authority which supplied the information shall be notified of this change in use, if not before, then within a reasonable time of the change in use occurring.

Article 9

Convention Tax Treatment

Expenses incurred by a resident of a Party with respect to any convention (including any seminar, meeting, congress or other function of a similar nature) held in the other Party shall, for the purposes of taxation in the first-mentioned Party, be deductible to the same extent that such expenses would be deductible if the convention were held in the first-mentioned Party.

Article 10

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 advisers 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 Article, 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.

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 endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under this Agreement.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution.

Article 12

Implementation Legislation

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

Article 13

Language

Requests for assistance and answers thereto shall be drawn up in the English language.

Article 14

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. This Agreement shall enter into force on the date of the later of these notifications, and shall have effect for all matters covered in Article 1, in respect of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force or, where there is no taxable period, in respect of taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Agreement entered into force.

Article 15

Termination

1. Either Party may terminate the Agreement by giving a notice of termination in writing through diplomatic channels.
2. 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. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. A Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Brussels, this 7th day of December 2009, in the English language.

**FOR THE GOVERNMENT
OF THE COMMONWEALTH
OF THE BAHAMAS:**

**FOR THE GOVERNMENT
OF THE KINGDOM OF BELGIUM:**

**T. Brent Symonette
Deputy Prime Minister and
Minister of Foreign Affairs**

**Didier REYNDERS,
Minister of Finance**