

Agreement

between

the Government of the Federal Republic of Germany

and

the Government of Bermuda

on

the Exchange of Information with Respect to Tax Matters

The Government of the Federal Republic of Germany  
and  
the Government of Bermuda (as authorised by the Government  
of the United Kingdom of Great Britain and Northern Ireland) –

Desiring to facilitate the exchange of information with respect to tax matters –

Have agreed as follows:

#### Article 1

##### Object and scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is relevant to the administration and enforcement of the respective laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. 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

A requested Contracting Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3  
Taxes covered

(1) The taxes which are the subject of this Agreement are:

a) in respect of the Federal Republic of Germany:

the income tax (Einkommensteuer),  
the corporation tax (Körperschaftsteuer),  
the trade tax (Gewerbesteuer),  
the capital tax (Vermögensteuer) and  
the inheritance tax (Erbschaftsteuer),  
including the supplements levied thereon;

b) in respect of Bermuda:

direct taxes of every kind and description.

(2) This Agreement shall also apply 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 Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

(3) With the exception of taxes listed in paragraph 1, the Agreement shall not apply to taxes imposed by any states, municipalities, or other political sub-divisions of a Contracting Party.

Article 4  
Definitions

(1) For the purposes of this Agreement, unless otherwise defined:

- a) "Federal Republic of Germany", when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
- b) "Bermuda", when used in a geographical sense, means the Islands of Bermuda, including its territorial sea;
- c) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) "competent authority" means:
  - (i) in respect of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; in respect of criminal tax matters the Federal Ministry of Justice or the agency to which it has delegated its power;
  - (ii) in respect of Bermuda, the Minister of Finance or an authorised representative of the Minister;

- f) "Contracting Party" means the Government of the Federal Republic of Germany or the Government of Bermuda as the context requires;
- g) "information" means any fact, statement or record in any form whatever;
- h) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- i) "national" means:
  - (i) in respect of the Federal Republic of Germany any German within the meaning of the Basic Law of the Federal Republic of Germany and legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;
  - (ii) in respect of Bermuda, any legal person, partnership, company, trust, estate, association or other entity deriving its status as such from the laws in force in Bermuda;
- j) "person" includes an individual, a company and any other body 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) "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;

- m) "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- n) "applicant Contracting Party" means the Contracting Party requesting information;
- o) "requested Contracting Party" means the Contracting Party requested to provide information;
- p) "resident" means:
  - (i) in respect of the Federal Republic of Germany, a person who is subject to German unlimited tax liability;
  - (ii) in respect of Bermuda, an individual who has the status of a legal resident of Bermuda; and a company, partnership, trust or association created under the laws of Bermuda;
- q) "tax" means any tax to which this Agreement applies.

(2) The term "relevant" wherever used in the Agreement with respect to information, shall be interpreted in a manner that ensures that information will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

(3) As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## Article 5

### Exchange of information upon request

(1) The competent authority of the requested Contracting Party shall provide upon request 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 Contracting Party if such conduct occurred in the requested Contracting Party.

(2) If the information in the possession of the competent authority of the requested Contracting Party is not sufficient to enable it to comply with the request for information, the requested Contracting Party shall use all relevant information gathering measures to provide the applicant Contracting Party with the information requested, notwithstanding that the requested Contracting Party may not need such information for its own tax purposes.

(3) If specifically requested by the competent authority of the applicant Contracting Party, the competent authority of the requested Contracting Party shall provide information under this Article, to the extent allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each Contracting 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; in the case of trusts, information on settlors, trustees, beneficiaries and the position in an ownership chain.

(5) This Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- a) 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;
- b) information relating to a period more than six years prior to the tax period under consideration;
- c) information unless the applicant Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties;
- d) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

(6) If information is requested that also relates to a person that is not a resident or national in one or other of the Contracting Parties, it also shall be established to the satisfaction of the competent authority of the requested Contracting Party that such information is necessary for the proper administration and enforcement of the tax laws of the applicant Contracting Party.

(7) The competent authority of the applicant Contracting Party shall provide the following information to the competent authority of the requested Contracting Party when making a request for information under this Agreement to demonstrate the relevance of the information sought to the request:

- a) the identity of the taxpayer under examination or investigation;

- b) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought and the form, if practicable, in which the applicant Contracting Party prefers to receive the information;
- c) the tax purposes for which the information is sought and why it is relevant to the determination of the tax liability of a taxpayer under the laws of the applicant Contracting Party;
- d) information that such taxpayer is a resident in, or national of, one of the Contracting Parties, or that it is necessary for the determination of the tax liability of a taxpayer under the laws of the applicant Contracting Party;
- e) the period of time with respect to which the information is required for the tax purposes;
- f) grounds for believing that the information requested is present in the jurisdiction of the requested Contracting Party or is in the possession or control of a person subject to the jurisdiction of the requested Contracting Party;
- 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 statement that the request conforms to the law and administrative practice of the applicant Contracting Party and would be obtainable by the applicant Contracting Party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested Contracting Party under this Agreement;
- i) a statement that the applicant Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(8) The competent authority of the requested Contracting Party shall forward the requested information as promptly as possible to the applicant Contracting Party. To ensure a prompt response, the competent authority of the requested Contracting Party shall:

- a) confirm receipt of a request in writing to the competent authority of the applicant Contracting Party and shall notify the competent authority of the applicant Contracting Party of deficiencies in the request, if any, preferably within 60 days of the receipt of the request;
- b) if the competent authority of the requested Contracting Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Contracting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## Article 6

### Tax examinations abroad

(1) The requested Contracting Party may allow, to the extent permitted under its law, representatives of the competent authority of the applicant Contracting Party to enter the territory of the requested Contracting Party to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the applicant Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the meeting with the individuals concerned.

(2) At the request of the competent authority of the applicant Contracting Party, the competent authority of the requested Contracting Party may allow representatives of the competent authority of the applicant Contracting Party to be present at the appropriate part of a tax examination in the requested Contracting Party.

(3) If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant Contracting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Contracting Party conducting the examination.

#### Article 7

##### Possibility of declining a request

(1) The competent authority of the requested Contracting Party may decline to assist where:

- a) the request is not made in conformity with this Agreement;
- b) the disclosure of the information requested would be contrary to the public policy of the requested Contracting Party;
- c) the applicant Contracting Party would not be able to obtain the information
  - (i) under its own laws for purposes of administration or enforcement of its own tax laws; or
  - (ii) in response to a valid request from the requested Contracting Party under this Agreement.

(2) The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information that is subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the

foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

(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 Contracting Party may decline a request for information if the information is requested by the applicant Contracting Party to administer or enforce a provision of the tax law of the applicant Contracting Party, or any requirement connected therewith, which discriminates against a national of the requested Contracting Party as compared with a national of the applicant Contracting Party in the same circumstances.

## Article 8 Confidentiality

(1) Any information received by a Contracting 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 Contracting 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 administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the respective laws of the Contracting Parties. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Contracting Party.

(2) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and the subject to the provisions of the law of the supplying Contracting Party.

Article 9  
Safeguards

The rights and safeguards secured to persons by the laws or administrative practices of the requested Contracting Party remain applicable. The rights and safeguards may not be applied by the requested Contracting Party in a manner that unduly prevents or delays effective exchange of information.

Article 10  
Costs

Incidents 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 of the Contracting Parties.

Article 11  
Mutual agreement procedure

- (1) The competent authorities of the Contracting Parties shall endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
- (2) In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.
- (3) The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

## Article 12

### Entry into force

(1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

(2) This Agreement shall have effect twelve months after the date on which this Agreement enters into force under paragraph 1 in respect of the taxable periods or dates on which charges to tax arise specified as follows:

- a) with respect to criminal tax matters the taxable periods shall be those beginning on or after the date of the Agreement entering into force under paragraph 1, or, where there is no taxable period, all charges to tax arising on or after the date of the Agreement enters into force under paragraph 1;
- b) with respect to all other matters covered in Article 1 the taxable periods shall be those beginning next after the date of entry into force of this Agreement or, where there is no taxable period, all charges to tax arising in the calendar year next after the date of the Agreement enters into force under paragraph 1.

## Article 13

### Termination

(1) Either Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.

(2) Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the competent authority of the other Contracting Party.

(3) In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Done at London, this third day of July, 2009, in duplicate, in the German and English languages, each text being equally authentic.

For the Government  
of the Federal Republic of Germany

Georg Boomgaarden

For the Government  
of Bermuda

Paula Cox