

Agreement

between

the Federal Republic of Germany

and

the Commonwealth of Dominica

on the Exchange of Information with Respect to Tax Matters

The Federal Republic of Germany

and

the Commonwealth of Dominica

Whereas the Government of the Federal Republic of Germany and the Government of the Commonwealth of Dominica (the Contracting States) recognise the need for co-operation and the exchange of information with respect to tax matters;

Whereas the Contracting States wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to tax matters;

Whereas the Contracting States have agreed that the following Agreement contains obligations on the part of the Contracting States only;

Have agreed as follows:

Article 1

Scope of the Agreement

(1) The Contracting States, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective laws of the Contracting States concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal 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.

(2) The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting State remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

A Requested State 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) This Agreement shall apply to the following existing taxes:

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)
- the inheritance tax (Erbschaftsteuer),
- the value added tax (Umsatzsteuer),
- the tax on insurance premiums (Versicherungsteuer) and
- all other taxes except customs and excise duties,
including the supplements levied thereon;

b) in respect of the Commonwealth of Dominica:

taxes of every kind and description except customs and excise duties.

(2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of this Agreement in addition to or in place of the existing taxes if the Contracting States so agree. The competent authorities of the Contracting States shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

Article 4

Definitions

(1) In this Agreement, unless otherwise defined:

- a) the term “Federal Republic of Germany” means the area in which the tax law of the Federal Republic of Germany is in force;
- b) the term “Commonwealth of Dominica” means the island of Dominica, including the territorial waters thereof and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law, exercises sovereign rights or its jurisdiction;
- c) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “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; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power, and

- (ii) in respect of the Commonwealth of Dominica, the Minister responsible for Finance or the Minister's authorised representative;
- f) the term "Contracting State" means the Federal Republic of Germany or the Commonwealth of Dominica as the context requires;
- g) the term "criminal laws" means all criminal laws designated as such under the respective laws of the Contracting States irrespective of whether such are contained in the tax laws, criminal code, or other laws;
- h) the term "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 Contracting State;
- i) the term "information" means any fact, statement, document, or record in any form whatever that may be relevant or material to tax administration and enforcement;
- j) the term "information gathering measures" means laws, regulations, and administrative or judicial procedures that enable a Contracting State to obtain and provide the requested information;
- k) the term "national" means:
 - (i) in respect of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust, estate, association, or any other entity deriving its status as such from laws in force in the Commonwealth of Dominica;
 - (ii) 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;
- l) the term "person" includes an individual, a company, and any other body of persons;

- m) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- n) the term “public collective investment fund or scheme” means any collective investment fund or scheme, provided the units, shares, or other interests in the 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;
- o) the term “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;
- p) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting States;
- q) the term “Requested Contracting State” means the Contracting State which is requested to provide or has provided information in response to a request;
- r) the term “Requesting Contracting State” means the Contracting State requesting information or having received information from the Requested Contracting State;
- s) the term “tax ” means any tax to which this Agreement applies;
- t) the term “tax matters” means all tax matters including criminal tax matters.

(2) As regards the application of this Agreement at any time by a Contracting State, 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 Contracting State. Where the laws of that Contracting State provide several meanings, any meaning given to the term under the

applicable tax laws of that Contracting State shall prevail over any meaning that is given to the term under any other laws of that Contracting State.

Article 5

Exchange of Information

(1) The competent authority of a Contracting State shall provide upon request by the competent authority of the other Contracting State information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the Requested Contracting State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Contracting State if it had occurred in the territory of the Requested Contracting State.

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

(3) If specifically requested by the competent authority of the Requesting Contracting State, the competent authority of the Requested Contracting State 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 State shall ensure that its competent authority, in accordance with the terms 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) (i) information regarding the beneficial ownership of companies, partnerships, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;

(ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

(5) Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting States 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;

(6) Any request for information under this Agreement 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 sought and the form in which the Requesting Contracting State would prefer to receive the requested information ;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax laws of the Requesting Contracting State, with respect to the person identified in subparagraph a) of this paragraph,
- f) grounds for believing that the information requested is held in the territory of the Requested Contracting State or is in the possession or control of a person within the jurisdiction of the Requested Contracting State;
- g) to the extent known, the name and address of any person believed to be in possession or control of the requested information,
- h) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Contracting State, and that if the

requested information was within the jurisdiction of the Requesting Contracting State then the competent authority of the Requesting Contracting State would be able to obtain the information under the laws of the Requesting Contracting State;

- i) a statement that the Requesting Contracting State 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 Contracting State shall forward the requested information as promptly as possible to the competent authority of the Requesting Contracting State. To ensure a prompt response, the competent authority of the Requested Contracting State shall confirm the receipt of a request in writing to the competent authority of the Requesting Contracting State and shall notify the competent authority of the Requesting Contracting State of any deficiencies in the request within 60 days of receipt of the request.

(8) If the competent authority of the Requested Contracting State 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 Contracting State refuses to provide the information, it shall immediately inform the competent authority of the Requesting Contracting State in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal.

Article 6

Tax Examinations Abroad

(1) The Requested Contracting State may, to the extent permitted under its domestic laws, and following reasonable notice from the Requesting Contracting State, allow representatives of the competent authority of the Requesting Contracting State to enter the territory of the Requested Contracting State in connection with a request to interview persons and examine records with the written consent of the persons concerned. The competent authority of the Requesting Contracting State shall notify the competent

authority of the Requested Contracting State of the time and place of the intended meeting with the persons concerned.

(2) At the request of the competent authority of the Requesting Contracting State, the competent authority of the Requested Contracting State may, in accordance with its domestic laws, allow representatives of the competent authority of the Requesting Contracting State to be present at the appropriate part of a tax examination in the territory of the Requested Contracting State.

(3) If the request referred to in paragraph 2 is granted, the competent authority of the Requested Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Contracting State of 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 State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Requested Contracting State conducting the examination in accordance with its domestic laws.

Article 7

Possibility of Declining a Request

(1) The competent authority of the Requested Contracting State may decline a request for information:

- a) where the request is not made in conformity with this Agreement;
- b) where the Requesting Contracting State 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 Contracting State.

(2) This Agreement shall not impose upon a Contracting State any obligation

- a) to provide information which is subject to legal privilege, or any trade, business, industrial, commercial, or professional secret or trade process, provided that information described 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; or
- b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting State under paragraph 4 of Article 5.

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

(5) The Requested Contracting State shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the Requesting Contracting State the competent authority of the Requesting Contracting State would not be able to obtain under its laws for purposes of the administration or enforcement of its own tax laws.

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

Article 8 Confidentiality

(1) All information provided and received by the competent authorities of the Contracting States shall be kept confidential and shall be protected in the same manner as information obtained under the domestic laws of the Contracting States .It 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. For these purposes information may be disclosed 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 States.

(2) Such information may not be used for any purpose other than the purposes stated in Article 1.

(3) The information provided to a Requesting Contracting State under this Agreement may not be disclosed to any other jurisdiction.

(4) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the Requested Contracting State.

Article 9

Costs

The 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 States.

Article 10

Mutual Agreement Procedure

(1) Where difficulties or doubts arise between the Contracting States regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

(2) The competent authorities of the Contracting States may also mutually agree the procedures to be used under Articles 5, 6 and 9.

(3) The competent authorities of the Contracting States may communicate with each other directly for purposes of this Article.

(4) The Contracting States may also agree to other forms of dispute resolution.

Article 11

Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 12

Entry into Force

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged. as soon as possible.

(2) This Agreement shall enter into force on the date of exchange of the instruments of ratification and its provisions shall have effect in both Contracting States:

- a) with respect to criminal tax matters on that date; and
- b) for all other matters covered in Article 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.

Article 13

Implementation Legislation

The Contracting States shall take all necessary steps to give effect to the terms of this Agreement.

Article 14
Termination

(1) Either Contracting State may terminate this Agreement by serving a notice of termination by letter to the other Contracting State through the diplomatic channel.

(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 Contracting State.

(3) Notwithstanding any termination of this Agreement, the Contracting States shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

Done at Roseau, this 21st day of September 2010, in duplicate in the German and English languages, each text being equally authentic

For the
Federal Republic of Germany
Christoph Peleikis

For the
Commonwealth of Dominica
Roosevelt Skerrit

Protocol
to the Agreement
between
the Federal Republic of Germany
and
the Commonwealth of Dominica
on the Exchange of Information with Respect to Taxes and Tax Matters

The Federal Republic of Germany and the Commonwealth of Dominica (the “Contracting States”) have agreed at the signing of the Agreement between the two States on the Exchange of Information with respect to Taxes and Tax Matters on the following provisions which shall form an integral part of the said Agreement:

1. With respect to subparagraph (a) of paragraph 6 of Article 5 it is understood that the identity of the person under examination or investigation may be determined by identifying information other than the name.

2. With respect to paragraph 4 of Article 8 the Contracting States shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply:
 - a) The receiving agency may use such data in compliance with paragraph 2 of Article 8 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency and that conform with Article 8.
 - b) The supplying agency shall be obliged to exercise vigilance as to the accuracy of the data to be supplied and their foreseeable relevance within the meaning of Article 1 and the proportionality to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious

possibility that the other Contracting State has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting State or that the competent authority of the other Contracting State would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.

- c) The receiving agency shall on request inform the supplying agency on a case-by-case basis about the use of the supplied data and the results achieved thereby.
- d) The receiving agency shall inform the person concerned of the collecting of data at the competent authority of the Requested Contracting State. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph d) shall apply accordingly.
- f) The competent authority of the Requesting Contracting State shall bear liability under its domestic laws in relation to any person suffering unlawful damage in connection with the supply of data under the exchange of data pursuant to this Agreement. In relation to the damaged person, the competent authority of the Requesting Contracting State may not plead to its discharge that the damage had been caused by the supplying agency.
- g) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- h) Where the domestic law of the supplying agency contains special deadlines for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

- i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.
3. Pursuant to Article 9 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested Contracting State. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the Requesting Contracting State. Examples of extraordinary costs include, but are not limited to, the following:
- a) reasonable fees charged for staff employed by third parties in assisting with the request;
 - b) reasonable fees charged by third parties for carrying out research;
 - c) reasonable fees charged by third parties for copying documents;
 - d) reasonable costs of engaging experts, interpreters, or translators;
 - e) reasonable costs of conveying documents to the Requesting Contracting State;
 - f) reasonable litigation costs of the Requested Contracting State in relation to a specific request for information;
 - g) reasonable costs for obtaining depositions or testimony; and
 - h) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears for an interview, deposition or testimony relating to a particular information request.

The competent authorities of the Contracting States shall consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the Requesting Contracting State will continue to pursue the request and bear the cost.

4. Formal communications, including requests for information, made in connection with or pursuant to this Agreement, will be in writing directly to the competent authority of the other Contracting State at the address given below, or such other address as may be notified by one Contracting State to the other from time to time. Follow up communications in respect of the original request for information may be done either in writing, electronically, or verbally, whichever is most practical, between the competent authorities of the Contracting States or their authorised representatives .

5. As long as this Agreement is in force and effective, it is the intention of the Contracting States not to introduce prejudicial or restrictive measures based on harmful tax practices or to apply such measures to residents or nationals of either Contracting State. However, in the event that a Contracting State has reason to believe that the other Contracting State has introduced such prejudicial or restrictive measures, both Contracting States shall immediately initiate proceedings to resolve the matter. A "prejudicial or restrictive measure based on harmful tax practices" means a measure applied by one Contracting State on the basis that the other Contracting State does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measure" the term includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures include any measure which relates, directly or indirectly, to taxation. However, they do not include any generally applicable measure, applied by either Contracting State against, amongst others, members of the OECD generally.

Competent authority
for the Federal Republic of Germany:

Bundeszentralamt für Steuern
53221 Bonn

In respect of criminal tax matters:

Bundesamt für Justiz
53094 Bonn

Competent authority
for the Commonwealth of Dominica:

The Ministry of Finance
Financial Centre
Kennedy Avenue
Roseau

In respect of criminal tax matters:

The above-mentioned
competent authority.