

AGREEMENT BETWEEN

THE GOVERNMENT OF DENMARK

AND

THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS

FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

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Whereas the Government of the British Virgin Islands and the Government of Denmark (“the Contracting Parties”) recognise the need for cooperation and the exchange of information in criminal and civil tax matters;

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

Whereas it is acknowledged that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Whereas the British Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the Organisation for Economic Cooperation and Development’s (OECD) principles of transparency and exchange of information and have subsequently actively participated in the OECD Global Forum on Taxation;

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

Whereas the Contracting Parties recognise that they will never engage in “fishing expeditions”;

Now, therefore, the Contracting Parties have concluded the following Agreement which contains obligations on the part of the Contracting Parties only.

Article 1

Scope of Agreement

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or 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.

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 Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting 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

1. The taxes covered by this Agreement are:
 - (a) in the case of the British Virgin Islands,
 - (i) the income tax;
 - (ii) the payroll tax; and
 - (iii) the property tax;
 - (b) in the case of Denmark,
 - (i) the income tax to the State (indkomstskatten til staten);
 - (ii) the income tax to the municipalities (den kommunale indkomstskat); and
 - (iii) value added tax (merværdiafgift).

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1 of this Article. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

Article 4

Definitions

1. In this Agreement unless the context otherwise requires-
 - (a) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;

- (b) “Denmark” means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;
- (c) “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
- (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 the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - (ii) in the case of Denmark, the Minister for Taxation or his authorized representative;
- (f) “Contracting Party” means the British Virgin Islands or Denmark as the context requires;
- (g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other laws;
- (h) “criminal tax matters” means tax matters involving intentional conduct 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, regulations and administrative or judicial procedures that enable a Requested Party to obtain and provide the requested information;

- (k) “national” means
- (i) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;
 - (ii) in relation to Denmark, (A) any Danish citizen, and (B) any legal person, partnership, association or other entity deriving its status as such from the laws in force in Denmark;
- (l) “person” includes 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) “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (o) "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) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

- (q) “Requested Party” means the Contracting Party to this Agreement which is requested to provide or has provided information in response to a request;
- (r) “Requesting Party” means the Contracting Party to this Agreement submitting a request for or having received information from the Requested Party;
- (s) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Contracting Party, 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 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 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, in accordance with the terms provided in paragraph 7 (a), advise the competent authority of the Requesting Party of that fact and request such additional information as may be 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 the information, the Requested Party shall use all relevant 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. 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 legal and 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; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations.

5. Notwithstanding the preceding paragraphs, 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 in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. 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 foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;

- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Party;
- (e) 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;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a declaration that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information were 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;
- (h) 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 difficulties.

7. 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:

- (a) the competent authority of the Requested Party shall confirm the 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; and

- (b) if the competent authority of the Requested Party 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 Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, or for its refusal.

Article 6

Tax Examinations or Investigations Abroad

1. The Requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the Requesting Party, 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 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, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.
3. If the request referred to in paragraph 2 of this Article 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 in accordance with its domestic laws.

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; or
- (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 difficulties; or
- (c) where the disclosure of the information requested would be contrary to public policy (ordre public).

2. The provisions of this Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. (a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:

- (i) produced for the purposes of seeking or providing legal advice, or
- (ii) produced for the purposes of use in existing or contemplated legal proceedings.

(b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

4. 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.

5. 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.

6. 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 resident or national of the Requested Party as compared with a resident or national of the Requesting Party in the same circumstances.

Article 8

Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and 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 or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the Requested Party.

3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

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. However, these rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10

Administrative Costs

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the Requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the Requesting Party. Extraordinary costs include, but are not limited to, the following:
 - (a) reasonable fees charged by third parties for carrying out research;
 - (b) reasonable fees charged by third parties for copying documents;
 - (c) reasonable costs of engaging experts, interpreters, or translators;
 - (d) reasonable costs of conveying documents to the Requesting Party;
 - (e) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
 - (f) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US500 to determine whether the Requesting Party will continue to pursue the request and bear the cost.

Article 11

No Prejudicial or Restrictive Measures

1. So long as this Agreement is in force and effective, it is the intention of the Contracting Parties not to apply or introduce prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party. However, in the event that a Contracting Party has reason to believe that the other Contracting Party has introduced such prejudicial or restrictive measures, both Contracting Parties shall immediately initiate proceedings to resolve the matter.

2. A prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Contracting Party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party 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.

3. 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 matters. However, they do not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

Article 12

Implementation Legislation

The Contracting Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 13

Language

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

Article 14

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the efforts referred to in paragraph 1 of this Article, 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 reaching agreement under this Article.

Article 15

Entry into Force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of the notifications. The provisions of this Agreement shall have effect:

- (a) with respect to criminal tax matters upon the entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force of this Agreement.

Article 16

Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting 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 Contracting Party.
3. If the Agreement is terminated the Contracting Parties 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 in that behalf by the respective parties, have signed this Agreement.

Signed by the Contracting Parties at Copenhagen this 18th day of May 2009, in duplicate in the English language.

For the Government of
Denmark

Kristian Jensen

For the Government of
The British Virgin Islands

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