

AGREEMENT

BETWEEN

THE GOVERNMENT OF BERMUDA

UNDER ENTRUSTMENT FROM THE GOVERNMENT OF

THE UNITED KINGDOM OF GREAT BRITAIN

AND NORTHERN IRELAND

AND

THE GOVERNMENT OF CANADA

ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

WHEREAS the Government of the United Kingdom has issued a letter of entrustment to the Government of Bermuda (hereinafter “Bermuda”) to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada (hereinafter “Canada”):

THE GOVERNMENT OF BERMUDA and **THE GOVERNMENT OF CANADA**, desiring to facilitate the exchange of information with respect to taxes, have agreed as follows:

ARTICLE 1

Object and Scope of this Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is relevant to the administration or enforcement of the domestic laws of the 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 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 existing taxes which are the subject of this Agreement are all taxes on income and on capital imposed or administered, in the case of Bermuda, by Bermuda, and in the case of Canada, by the Government of Canada.
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. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) “Canada”, used in a geographical sense, means:
 - (i) the land territory, air space, internal waters and territorial sea of Canada;
 - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
 - (b) “Bermuda” means the Islands of Bermuda;

- (c) “applicant Party” means the Party requesting for or having received information from the requested Party;
- (d) “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 and sold, or readily purchased and redeemed, by the public. Units, shares or other interests in a 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;
- (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) “competent authority” means, in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister and, in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative;
- (g) “Party” means Bermuda or Canada as the context requires;
- (h) “information” means any fact, statement or record in any form whatever;
- (i) “information-gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (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 that 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) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (n) “requested Party” means the Party requested to provide information; and
- (o) “tax” means any tax to which this Agreement applies.
2. The term “relevant” wherever used in this 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 ongoing investigation could only be made following the receipt of the information.
3. 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 the 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 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 such conduct occurred in the requested Party.

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 relevant information gathering measures to provide the applicant 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 applicant 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 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 of such persons in an ownership chain; and in the case of foundations, information on founders, members of the foundation council and beneficiaries and the position of such persons in an ownership chain.
5. This Agreement does not create an obligation on the 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 Party has pursued all means available in its own Party to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested 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 person under examination or investigation;
- (b) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person subject to the jurisdiction of the requested Party;
- (c) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (d) a statement that the request conforms to the law and administrative practice of the applicant Party and would be obtainable by the applicant Party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested Party under this Agreement;
- (e) a statement that the applicant Party has pursued all means available in its own Party to obtain the information, except those that would give rise to disproportionate difficulties;

and, to the fullest extent possible:

- (f) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought and the form, in which the applicant Party prefers to receive the information;

- (g) 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 Party;
- (h) the period of time with respect to which the information is required for the tax purposes.

7. The competent authority of the requested Party shall immediately confirm receipt of a request in writing to the competent authority of the applicant Party and shall:

- (a) notify the competent authority of the applicant Party, within 60 days of receiving the request, of any deficiencies in the request;
- (b) notify the competent authority of the applicant Party, within 90 days of receiving the request, of the intention to refuse the request or of any obstacle preventing the requested Party from fulfilling the request;
- (c) inform the competent authority of the applicant Party of the grounds for the refusal of the request or the nature of the obstacles to processing the request;
- (d) provide the requested information within 90 days of receiving the request or, in the event that there is an obstacle to fulfilling the request, advise the competent authority of the applicant Party of the estimated additional time required to fulfill the request.

ARTICLE 6

Tax Examinations Abroad

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

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

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant 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 Party for the conduct of the examination. All decisions with respect to 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 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 Party (“ordre public”);
 - (c) the applicant 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 Party under this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information 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. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative (hereinafter “professional legal advisor”) where such communications:

- (a) are communications between a professional legal adviser and a client produced for the purposes of the provision of legal advice to the client;
- (b) are communications between:
 - (i) a professional legal adviser and a client,
 - (ii) a professional legal adviser acting for the client and another person, or
 - (iii) the client and another person instructed by a professional legal advisor, produced for the purposes of existing or contemplated legal proceedings.

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

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

ARTICLE 8

Confidentiality

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 without the express written consent of the competent authority of the requested Party.

ARTICLE 9

Safeguards

The rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable. The 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

Costs

Incidence 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 Parties.

ARTICLE 11

Mutual Agreement Procedure

1. The competent authorities of the Parties shall jointly 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 Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Article.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the thirtieth day after the later notice by which each of the Parties has notified the other in writing of its completion of the necessary procedures for the entry into force of this Agreement. Upon the date of entry into force, it shall have effect:

- (a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), 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

Termination

1. A Party may terminate this Agreement by serving a notice of termination on the other 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 the notice of termination.
3. In the event of termination, both 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 thereto, have signed this Agreement.

SIGNED in duplicate at *Bermuda* this *14th* day of *June* 2010,
in the English and French languages, each version being equally authentic.



**FOR THE GOVERNMENT
OF BERMUDA**



**FOR THE GOVERNMENT
OF CANADA**