

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) (NO. 5) ORDER, 2010

ARRANGEMENT OF SECTIONS

Section

1. . Citation.
 2. . Application of Part 1 of the Act.
- SCHEDULE

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2010 NO. 95

**Mutual Legal Assistance (Tax Matters) Act, 2003
(No. 18 of 2003)**

Mutual Legal Assistance (Tax Matters) (No. 5) Order, 2010

[Gazetted 23rd December, 2010]

The Minister, in exercise of the power conferred by section 3 (3) of the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003) makes this Order.

Citation. **1.** This Order may be cited as the Mutual Legal Assistance (Tax Matters) (No. 5) Order, 2010.

Application of Part 1 of the Act. No. 18 of 2003 **2.** Part 1 of the Mutual Legal Assistance (Tax Matters) Act, 2003 applies to the Agreements reproduced in the Schedule.

SCHEDULE

[Section 2]

1.

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Portuguese Republic and the Government of the British Virgin Islands (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in tax matters;

Whereas the 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 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 OECD's principles of transparency and exchange of information and subsequently have participated actively in the OECD Global Forum on Taxation;

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

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

Now, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

ARTICLE 1 SCOPE OF AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Party concerning taxes covered by this Agreement;
- b) Include 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; and

- c) Be treated as confidential as set forth in this Agreement.

ARTICLE 2 JURISDICTION

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

ARTICLE 3 TAXES COVERED

1. The taxes covered by this Agreement are:
 - a) In the case of Portugal:
 - i. Personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
 - ii. Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas – IRC);
 - iii. Local surtax on corporate income tax (Derrama);
 - iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas).
 - b) In the case of the British Virgin Islands,
 - i. The income tax;
 - ii. The payroll tax; and
 - iii. The property tax.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in sub-paragraph 1. The competent authorities of the 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. For the purposes of this Agreement, unless otherwise defined:

- a) The term “Portugal” when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the International Law and the Portuguese Legislation;
- b) The term “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- c) “Competent authority” means:
 - (i) In respect of Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
 - (ii) In respect of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- d) “Person” includes an individual, a company and any other body of persons,
- e) “National” means
 - i) In relation to Portugal any individual possessing the nationality or citizenship of that State; and any legal person, partnership or association deriving its status as such from the laws in force in that State;
 - ii) 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.
- f) “Company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
- g) “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,
- h) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
- i) “Recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties,
- j) “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,

- k) “Tax” means any tax to which the Agreement applies,
- l) “Requesting Party” means the Party requesting information,
- m) “Requested Party” means the Party requested to provide information,
- n) “Information-gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information,
- o) “Information” means any fact, statement, document or record in any form whatever,
- p) “Tax matters” means all tax matters including criminal tax matters,
- q) “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,
- r) “Criminal laws” means all criminal laws designated as such under the respective law of the Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

2. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made 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 provided 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 in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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 Party shall ensure that its competent authorities, in accordance with the terms of this Agreement have 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; and

b) Information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; 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,

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 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 Party would prefer to receive it,

d) The tax purpose for which the information is sought,

e) The reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the tax law of the Requesting Party, with respect to the person identified in subparagraph a) of this paragraph,

f) Grounds for believing that the information requested is held in the Requested Party or is in the possession of or obtainable by a person within the jurisdiction of the Requested Party,

- g) To the extent known, the name and address of any person believed to be in possession of the requested information,
- h) A statement that the request is in conformity with the laws and administrative practices of the Requesting Party, that if the requested information was 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 and that it is in conformity with this Agreement,
- i) 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.

6.. The competent authority of the Requested Party shall acknowledge receipt of the request to the competent authority of the Requesting Party and shall use its best endeavours to forward the requested information to the Requesting Party with the least reasonable delay.

ARTICLE 6 TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. By reasonable notice given in advance, the Requesting Party may request that the Requested Party allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party, to the extent permitted under its domestic laws, 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 notify 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, in accordance with its domestic laws, allow 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 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;
 - 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 the public policy (ordre public) of the Requested Party.

2. This Agreement shall not impose upon a Requested Party any obligation:
 - a) To provide items 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 by reason of that fact alone be treated as such a secret or trade process; 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 Party under paragraph 4 of Article 5.

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 where such communications are:
 - (a) Produced for the purposes of seeking or providing legal advice or
 - (b) Produced for the purposes of use in 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 shall not be required to obtain and provide information which the Requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the Requested Party under this Agreement.

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

**ARTICLE 8
CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information 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 public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the Requested Party.
4. The information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.
5. 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 supplying Party.

**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. 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**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary 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
NO PREJUDICIAL OR RESTRICTIVE MEASURES

1. Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Party so long as this Agreement is in force and effective.
2. A "prejudicial or restrictive measure based on harmful tax practices" is a measure applied by one Party to residents or nationals of either Party on the basis that the other Party does not engage in effective exchange of information and/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 paragraph 2 the term "prejudicial or restrictive measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

ARTICLE 12
IMPLEMENTING LEGISLATION

The 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 Parties regarding the implementation or interpretation of the 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 Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Agreement.
4. The Parties shall agree on procedures for dispute resolution should this become necessary.

ARTICLE 15
ENTRY INTO FORCE

1. This Agreement shall enter into force thirty days from the date on which the 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. Upon the date of entry into force, this Agreement shall have effect:
 - a) For 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 16
DURATION AND TERMINATION

1. The present Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the present Agreement upon a prior notification in writing through diplomatic channels.
3. The present Agreement shall terminate six months after the receipt of such notification.
4. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of the present Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

Done at _____, on the _____, in duplicate in the Portuguese and English languages, both texts being equally authentic.

For the Portuguese Republic

For the Government of the
Virgin Islands

Professor Sergio Trigo Vasques
Secretary of State for Tax Affairs
in the Ministry of Finance and
Public Administration

Honourable Dancia Penn
Deputy Premier

Protocol to the Agreement between the Portuguese Republic and the Government of the British Virgin Islands, for Exchange of Information relating to Taxes.

The Portuguese Republic and the Government of the British Virgin Islands (the “Parties”) have agreed at the signing of the Agreement between the Portuguese Republic and the Government of the British Virgin Islands, for Exchange of Information Relating to Taxes on the following provisions which shall form an integral part of the said Agreement:

1. Regarding paragraph 5 of Article 8 , if personal data are exchanged under the Agreement, the following additional provisions shall apply:
 - a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
 - b) The receiving authority shall on request inform the supplying authority about the use of the supplied data;
 - c) Personal data may be supplied only to the responsible agencies. Any subsequent supply of the information to other agencies may be effected only with the prior written approval of the supplying authority;
 - d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any ban on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;
 - e) Upon application, the person concerned shall be informed of the supplied data relating to him of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Party in whose sovereign territory the application for the information is made;
 - f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of the supply of data pursuant to this Protocol. In relation to the person suffering unlawful damage, the receiving authority may not plead in its defence that the damage had been caused by the supplying authority;

- g) If the domestic law of the supplying authority provides, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
 - h) The supplying and the receiving authorities shall be obliged to keep official records of the supply and receipt of personal data;
 - i) The supplying and the receiving authorities shall be obliged to take effective measures to protect the personal data supplied against unauthorized access, unauthorized alteration and unauthorized disclosure.
2. With respect of Article 11, in the event that either Party to the Agreement applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Party, it is understood that that other Party may suspend the operation of the Agreement for so long as such measures apply.

For the Portuguese Republic:

Professor Sergio Trigo Vasques
Secretary of State for Tax Affairs in the
Ministry of Finance and Public Administration

For the Government of the British Virgin
Islands

Honourable Dancia Penn
Deputy Premier

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE

PORTUGUESE REPUBLIC

AND

THE BRITISH VIRGIN ISLANDS

CONCERNING

THE INTERPRETATION OR APPLICATION OF THE AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Portuguese Republic and the British Virgin Islands (“the Parties”), desiring to facilitate the exchange of information relating to taxes, have reached the following understanding:

1. Pursuant to Article 10 of the Agreement between the Parties, costs that would be incurred in the ordinary course of administering the domestic tax laws of the Requested Party will be borne by the Requested Party when such costs are incurred for the purpose of responding to a request for information. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the Requested Party in reviewing and responding to information requests submitted by the Requesting Party.
2. Extraordinary costs incurred in providing assistance shall be borne by the Requesting Party. Such costs include, but are not limited to, the following:
 - a) Reasonable costs of engaging experts, interpreters or translators when necessary;
 - b) Reasonable litigation costs of the Requested Party in direct relation to a specific request for information, including costs of engaging external counsel and advisers;
 - c) Reasonable costs of obtaining depositions or testimony.
3. The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed 1,000 Euros to determine whether the Requesting Party will continue to pursue the request and bear the cost.

4. The competent authorities of the Parties shall endeavour to resolve by mutual agreement procedure any difficulties or doubts arising as to the classification of expenses to be considered as “extraordinary costs”.

For the Portuguese Republic

For the British Virgin Islands

Signature:

Signature:

Date:

Date:

Mr. Neil Smith
Financial Secretary

COMPETENT AUTHORITY

Ministry of Finance
COMPETENT AUTHORITY

**JOINT DECLARATION
BY THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE BRITISH
VIRGIN ISLANDS**

1. The Portuguese Republic and the Government of the British Virgin Islands (BVI) have today signed an Agreement for the Exchange of Information Relating to Taxes.
2. Portugal and BVI have long been active in international efforts in the fight against financial crimes and each share a common commitment to develop and comply with international standards and money laundering, terrorist financing and financial regulation. The Portuguese Republic recognises the BVI Government's reputation as a constructive and co-operative member of the international community with a globally integrated and responsible financial centre.
3. The Agreement for the Exchange of Information relating to Taxes constitutes a step forward in the global effort to establish an international financial system that is based on transparency and effective exchange of information in tax matters and is a further positive development in the co-operative relationship which already exists between the Portuguese Republic and BVI.
4. Both countries already have legislation in place which provides for cooperation and the exchange of information in tax matter. The Agreement will allow exchange of information upon request in accordance with agreed procedures in relation to both civil and criminal tax matters. There will be no "fishing expeditions" for information.
5. Both countries have also confirmed in the Agreement that they have no intention to introduce in relation to residents or nationals of each other any discriminatory, prejudicial or restrictive measures based on harmful tax practices.
6. This Agreement represents a milestone in relations between the two Governments and both are committed to examine other areas of mutual co-operation and benefit.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Declaration.

Done in duplicate, this 5th day of October, 2010.

**FOR THE
PORTUGUESE REPUBLIC:**

Professor Sergio Trigo Vasques
Secretary of State for Tax Affairs in the
Ministry of Finance and Public Administration

**FOR THE
GOVERNMENT OF THE
BRITISH VIRGIN ISLANDS:**

Honourable Dancia Penn
Deputy Premier

2.

The Government of the British Virgin Islands
and
The Government of the Federal Republic of Germany

Whereas the Government of the Federal Republic of Germany and the Government of the British Virgin Islands (“the Contracting Parties”) recognise that present legislation already provides a framework for cooperation and the exchange of information in criminal 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 Federal Republic of Germany is a Member of the OECD;

Whereas the British Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently have participated actively 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 the following Agreement contains obligations on the part of the Contracting Parties only;

Have agreed as follows:

Article 1
Scope of Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties 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.

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

2. The taxes covered by this Agreement are:
 - (a) in the case of the Federal Republic of Germany
 - the income tax (Einkommensteuer);
 - the corporation tax (Körperschaftsteuer);
 - the trade tax (Gewerbsteuer);
 - the capital tax (Vermögensteuer);
 - the inheritance tax (Erbschaftsteuer);
 - the value added tax (Umsatzsteuer); and
 - the tax on insurance premiums (Versicherungsteuer);

including the supplements levied thereon;

- (b) in the case of the British Virgin Islands,
 - the income tax;
 - the payroll tax; and
 - the property tax

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in sub-paragraph 1. 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. For the purposes of this Agreement, unless otherwise defined:
 - (a) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
 - (b) “Federal Republic of Germany” means the area in which the tax law of the Federal Republic of Germany is in force;
 - (c) “competent authority” means
 - (i) in the case 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 the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - (d) “Contracting Party” means the Government of the British Virgin Islands or the Government of the Federal Republic of Germany as the context requires;
 - (e) “information” means any fact, statement, document or record in whatever form;
 - (f) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;

- (g) “national” means
 - (i) in relation to the Federal Republic of Germany, any German within the meaning of the Basic Law (Grundgesetz) of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;
 - (ii) 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.
- (h) “person” includes an individual (“natural person”), a company or any other body of persons,
- (i) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (j) “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,
- (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) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,
- (m) “collective investment scheme” means any pooled investment vehicle irrespective of legal form; and “public collective investment 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;
- (n) “Requested Contracting Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “Requesting Contracting Party” means the party to this Agreement submitting a request for or having received information from the Requested Contracting Party;

- (p) "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 statutes;
- (q) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Contracting Party;
- (r) "tax" means any tax covered by this Agreement;
- (s) "tax matters" means all tax matters including criminal tax matters.

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 a Requested Contracting Party shall provide upon request in writing by the Requesting Contracting 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 Contracting Party if it occurred in the territory of the Requested Contracting Party. If the information received by the competent authority of the Requested Contracting Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the Requesting Contracting 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 Contracting Party is not sufficient to enable it to comply with the request for the information, the Requested Contracting Party shall use all relevant information gathering measures to provide the Requesting 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 Requesting Contracting Party, the competent authority of the Requested Contracting 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) (i) information regarding the beneficial ownership of companies, partnerships, trusts and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests;

(ii) 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,

provided that this Agreement does not create an obligation on the Contracting 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. The competent authority of the Requesting 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 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 Contracting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Contracting Party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the Requested Contracting Party or is in the possession or control of a person subject to the jurisdiction of the Requested Contracting 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 statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Contracting Party, and that if the requested information were within the jurisdiction of the Requesting Contracting

Party then the competent authority of the Requesting Contracting Party would be able to obtain the information under the laws of the Requesting Contracting Party.

- (h) a statement that the Requesting Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Contracting Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Contracting Party. To ensure a prompt response, the competent authority of the Requested Contracting Party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the Requesting Contracting Party and shall notify the competent authority of the Requesting Contracting Party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the Requested Contracting 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 Contracting Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Contracting 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 Contracting Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Contracting Party, allow representatives of the competent authority of the Requesting Contracting Party to enter the territory of the Requested Contracting Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the Requesting Contracting Party shall notify the competent authority of the Requested Contracting Party 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 Party, the competent authority of the Requested Contracting Party may, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Contracting Party to be present at the appropriate part of a tax examination in the territory of the Requested Contracting Party.

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

Article 7 Possibility of Declining a Request

1. The competent authority of the Requested Contracting Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the Requesting Contracting 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 the public policy (ordre public) of the Requested Contracting Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process;

3. 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 Contracting Party shall not be required to obtain and provide:
 - a. information which, if the requested information was within the jurisdiction of the Requesting Contracting Party, the competent authority of the Requesting Contracting Party would not be able to obtain under its laws;
 - b. information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer;
 - c. information relating to a period more than six years prior to the tax period under consideration.

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

Article 8 Confidentiality

1. Any information provided and received by the competent authority of a Contracting Party shall be treated as confidential and shall be protected in the same manner as information obtained under the domestic laws of that Contracting Party. It shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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 administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the domestic laws of the Contracting Parties.
2. The information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the Requested Contracting Party.
3. Information provided to a Requesting Contracting 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 Contracting Party. 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

The 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 Contracting Parties.

Article 11 Language

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

Article 12
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual 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 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 13
Protocol

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

Article 14
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. Upon the date of entry into force, this Agreement shall have effect:
 - (a) for 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 15
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. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

Done at London in duplicate this 5th day of October, 2010 in the English and German languages, each text being equally authentic.

For the Government of
British Virgin Islands

For the Government of
Federal Republic of Germany

Honourable Dancia Penn
Deputy Premier

His Excellency, Mr Georg Boomgaarden
Germany's Ambassador to the United Kingdom

Protocol
to the Agreement
between
The Government of the British Virgin Islands
and
The Government of the Federal Republic of Germany
on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of the British Virgin Islands and the Government of the Federal Republic of Germany (the “Contracting Parties”) have agreed at the signing of the Agreement on Assistance in Civil and Criminal Tax Matters through Exchange of Information on the following provisions which shall form an integral part of the said Agreement:

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
 - a) A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/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.
 - b) Without limiting the generality of subparagraph a, the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measures, applied by either Contracting party against, amongst others, members of the OECD generally.
2. Both Contracting Parties recognise that they are not at liberty to request information without an apparent nexus to an open enquiry or investigation, which is in line with number 57 of the commentary to the OECD Model Agreement on Exchange of Information on Tax Matters of

2002. With respect to subparagraph a of paragraph 5 of Article 5 it is understood that the identity of the person under examination or investigation must be determined by sufficient information, typically the name and, to the extent known, the address, account number or similar identifying information.

3. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement. 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) Notwithstanding the provisions of paragraph 2 of Article 8, the information may be used for other purposes, if under the law of both Contracting Parties it may be used for these other purposes and the competent authority of the supplying Contracting Party has agreed to this use. Use for other purposes without the prior approval of the supplying Contracting Party is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of personal freedom, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying Contracting Party must be asked without delay for retroactive authorisation of the change in purpose. If authorisation is refused, the information may no longer be used for the other purpose and the receiving agency shall erase the data supplied without delay and shall confirm in writing. Any damage which has been caused by use of the information for the other purpose must be compensated by the receiving Contracting Party. Information provided to a Requesting Contracting Party shall not be disclosed to any other jurisdiction.

c) The competent authority of the supplying Contracting Party 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 it is supplied. Data is foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting Party 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 Party or that the competent authority of the other Contracting Party 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.

- d) The competent authority of the receiving Contracting Party shall on request inform the competent authority of the supplying Contracting Party on a case-by-case basis about the use of the supplied data and the results achieved thereby.
- e) The receiving agency shall inform the person concerned of the collecting of data at the supplying agency. 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.
- f) 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 e) shall apply accordingly. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting Party in whose sovereign territory the application for the information is made;
- g) The receiving agency 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 person who has suffered damage, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.
- h) The Contracting Parties shall ensure that their competent authorities and any other agencies involved keep official records of the supply and receipt of personal data for the requisite duration under domestic law.
- i) Where the domestic law of the supplying Contracting Party contains special deadlines for the deletion of the personal data supplied, the competent authority of that Contracting

Party 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.

j) The Contracting Parties shall ensure that their competent authorities and any other agencies involved are obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

4. Pursuant to Article 10 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 Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs. 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 Party. 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 Party;
- f) reasonable litigation costs of the Requested Contracting Party 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 will consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the Requesting Contracting Party will continue to pursue the request and bear the cost.

5. With respect to Article 11 it is understood that the need to use the English language refers to the request for information, the responses thereto and to other written communication between the competent authorities. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.

6. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier mentioned competent authorities or their authorised entities.

Competent authority

for the British Virgin Islands:

Mr Neil Smith

Financial Secretary

Ministry of Finance

Government of the British Virgin Islands

33 Admin Drive, Road Town, Tortola

British Virgin Islands, VG1110

Competent authority

for the Federal Republic of Germany:

Bundeszentralamt für Steuern

53221 Bonn

In respect of criminal tax matters:

In respect of criminal tax matters:

The above-mentioned
competent authority

Bundesamt für Justiz
53094 Bonn .

Made by the Minister this 7th day of December, 2010.

(Sgd.) HONOURABLE RALPH T. O'NEAL,
Minister for Finance.