



VIRGIN ISLANDS

## **MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT**

### **Revised Edition**

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

### **MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT**

Act 18 of 2003 ... in force 1 January 2004

Amended by Acts: 16 of 2005 .. in force 1 July 2005  
11 of 2011 .. in force 13 July 2011  
11 of 2012 .. in force 12 November 2012  
10 of 2013 .. in force 16 May 2013  
12 of 2014 .. in force 16 September 2014  
3 of 2015 .. in force 31 March 2015  
17 of 2015 .. in force 1 January 2016  
8 of 2018 .. Part IV in force - 1 January 2018  
Remainder - in force 18 September 2018

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**SEE STATUTORY INSTRUMENTS BOOKLET**





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## MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT

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**MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT**

*(Acts 18 of 2003, 16 of 2005, 11 of 2011, 11 of 2012, 10 of 2013, 12 of 2014,  
3 of 2015, 17 of 2015 and 8 of 2018)*

AN ACT TO MAKE PROVISION FOR GIVING EFFECT TO THE TERMS OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, INCLUDING THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES, AND ANY SIMILAR AGREEMENT TO WHICH THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS IS A PARTY, FOR GIVING EFFECT TO THE DIRECTIVE OF THE COUNCIL OF THE EUROPEAN UNION ON TAXATION OF SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS, FOR GIVING EFFECT TO THE COMMON REPORTING STANDARD, FOR GIVING EFFECT TO THE BASE EROSION AND PROFIT SHIFTING ACTION 13: COUNTRY-BY-COUNTRY REPORTING; AND FOR MATTERS CONNECTED THEREWITH.

*(Amended by Act 17 of 2015)*

**Commencement**

*[1st January, 2004]*

**Short title and commencement**

1. This Act may be cited as the Mutual Legal Assistance (Tax Matters) Act.

PART I

TAX INFORMATION EXCHANGE: GENERAL

**Interpretation for Part I**

2. (1) In this Part, unless the context otherwise requires—

“Agreement” means—

- (a) the USA Agreement; and
- (b) any agreement to which this Part applies by virtue of an Order made under section 3(3); *(Amended by Act 16 of 2005)*

“Authority” means the Financial Secretary or a person or authority designated by him under section 4;

“Inspector” means a person assigned as Inspector under section 44B(1) of the Income Tax Ordinance;

“Minister” means the Minister to whom responsibility for finance is assigned;

“Representative” means a representative of a competent authority of a requesting party;

“request” means a request made under the Agreement by a requesting party to the Authority;

“USA Agreement” means the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, for the exchange of information relating to taxes, together with the Competent Authority Agreements annexed thereto, as set out in Schedule 1. *(Amended by Act 16 of 2005)*

*(Amended by Act 16 of 2005)*

(2) In this Part, unless the context otherwise requires, any expression which is defined in the Agreement, shall have the same meaning as that given to it in the Agreement. *(Amended by Act 16 of 2005)*

(3) Where in this Act reference is made to Schedule 1, this shall be construed to include any Schedule set out in an Order made by the Minister pursuant to section 3(3). *(Inserted by Act 11 of 2011)*

### **Implementation of the Agreement**

3. (1) This Part shall apply for the purpose of giving effect to the Agreement. *(Amended by Act 16 of 2005)*

(2) Where an Agreement is amended by the parties thereto, the Minister may, by Order, amend Schedule 1 accordingly. *(Amended by Acts 16 of 2005 and 11 of 2011)*

(3) Where the Government of the British Virgin Islands becomes a party to an agreement similar to the USA Agreement, the Minister may, by Order, provide that this Part shall apply to that agreement with such necessary modifications as may be specified in the Order and the text of that agreement shall be set out in a Schedule to the Order. *(Amended by Act 16 of 2005)*

(4) For the avoidance of doubt and notwithstanding anything to the contrary contained in this Part or in any Agreement—

(a) anything required of the Authority pursuant to or in accordance with a provision of an Agreement shall be dealt with in such manner as would be consistent with and satisfy the requirements of the Agreement, and the doing of such thing by the Authority shall be treated as a power the Authority has by virtue of this Act to exercise; and *(Amended by Act 12 of 2014)*

(b) the entry into force of an Agreement in relation to tax matters shall not be construed to prevent the Authority from requesting or receiving from any person information in relation to criminal tax matters that occurred prior to the coming into force of that Agreement or this Act.

*(Inserted by Act 10 of 2013)*

### **Power of the Minister to make Orders**

3A. (1) The Minister may, on the advice of the Authority, make such Order to be published in the *Gazette* in relation to each Agreement as he considers necessary for the effective carrying out of the provisions of the Agreement and this Act.

(2) Without limiting subsection (1), an Order made under subsection (1) may specify the information required to be provided to the Authority, the manner and the deadlines by which the information shall be provided.

(3) A person who fails to comply with an obligation imposed under an Order made pursuant to subsection (1), commits an offence and is liable—

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

*(Inserted by Act 12 of 2014)*

### **The Authority**

4. (1) The Financial Secretary shall be the competent authority for the purposes of implementing an Agreement and the administration of this Act generally. *(Inserted by Act 11 of 2011)*

(2) The Financial Secretary may, in writing, designate any person or authority to perform the functions of the Authority under this Part and the Agreement. *(Amended by Acts 16 of 2005 and 11 of 2011)*

(3) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter. *(Amended by Act 11 of 2011)*

### **Power of the Authority to request information**

5. (1) The Authority may, for the purposes of complying with a request under the Agreement, by notice in writing, require a person or entity whether acting in an agency or fiduciary capacity, including a nominee or trustee, to provide such information as may be specified in the notice, provided that the person or entity is reasonably believed to be in the possession or control of the information to which the notice relates.

*(Substituted by Act 17 of 2015)*

(2) The power under subsection (1) shall not apply to items subject to legal privilege.

(3) The Authority may require any information provided pursuant to this section—

(a) to be provided within such time as is specified in the notice;

(b) to be provided in such form as the Authority may require; and

(c) to be verified or authenticated in such manner as the Authority may reasonably require.

(4) The Authority may take copies or extracts of any information produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his lien.

(6) A person who, without lawful or reasonable excuse, fails to comply with—

- (a) a notice issued to him under subsection (1), or
- (b) any request made of him by the Authority in exercise of any power pursuant to section 3(4),

commits an offence and is liable—

- (i) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or
- (ii) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

*(Substituted by Act 12 of 2014)*

### **Ensuring compliance with section 5**

**5A.** (1) For the purposes of achieving the objectives of the requirements of section 5 and notwithstanding anything to the contrary contained in any other enactment, every company shall, in addition to any records required to be kept or maintained under the BVI Business Companies Act or any other enactment—

- (a) keep at the office of its registered agent or at such other place or places, within or outside the Virgin Islands, as the directors may determine, the records and underlying documentation of the company; and
- (b) retain the records and underlying documentation for a period of at least five years from the date—
  - (i) of completion of the transaction to which the records and underlying documentation relate; or
  - (ii) the company terminates the business relationship to which the records and underlying documentation relate.

(2) Where the records and underlying documentation of a company are kept at a place other than at the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place or places at which the records and underlying documentation are kept.

(3) Where the place at which the records and underlying documentation of the company changes, the company shall provide its registered agent with the physical address of the new location of the records and underlying documentation within fourteen days of the change of the location.

(4) The records and underlying documentation of the company shall be in such form as—

- (a) are sufficient to show and explain the company's transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(5) For the purposes of this section—

- (a) “business relationship” means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular, habitual or regular basis;
- (b) “company” has the meaning specified in section 3 of the BVI Business Companies Act, and includes “foreign company” as defined in that section; and  
*(Inserted by Act 11 of 2012)*
- (c) “records and underlying documentation” includes accounts and records (such as invoices, contracts and similar documentation) in relation to—
  - (i) all sums of money received and expended by the company and the matters in receipt of which the receipt and expenditure takes place;
  - (ii) all sales and purchases of goods by the company; and
  - (iii) the assets and liabilities of the company.  
*(Substituted by Act 3 of 2015)*

### **Power of the Authority to apply for a search warrant**

6. (1) Where—

- (a) a person who is issued a notice under section 5, fails to comply or only partly complies with such notice, or
- (b) the Authority is of the opinion that if a notice is issued to a person under section 5, it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Authority may, without prejudice to section 5(6), apply to a Magistrate for a search warrant and a certificate given by the Authority that the issue of a search warrant is required for the purposes of complying with a request shall be sufficient authority for the issue of the search warrant without further inquiry.

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Authority, together with a police officer of the rank of Inspector or above and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any information appearing to be information of a type in respect of which the warrant was issued or to take, in relation to such information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any information appearing to be information of a type in respect of which the warrant was issued;

- (d) to require any person on the premises to provide an explanation of any information appearing to be information of a type of which the warrant was issued or to state where such information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

### **Interviews and tax examinations**

7. (1) Where the competent authority of a requesting party requests that its Representative interview, and examine the records of, a person in the British Virgin Islands and the person concerned notifies the Authority, in writing, that he consents to the interview and examination, the Representative may interview, and examine the records of, the person in the British Virgin Islands at such time and place as are agreed upon, in writing, by the Authority and the person concerned.

(2) In conducting an interview and examination under subsection (1), a Representative may—

- (a) take statements from the person being interviewed;
- (b) with the consent of the person being interviewed, make copies, or take extracts from, any record.

(3) A Representative shall not have the power—

- (a) to compel a person to answer any question;
- (b) to compel a person to remain in any place for the purpose of an interview;
- (c) to compel a person to produce any document or thing;
- (d) to enter and search premises without the consent of the owner or occupier of the premises; or
- (e) to seize or take documents or other things without the consent of the person being interviewed.

(4) A person shall, at any time when he is being interviewed by a Representative, have the right to be advised, at his own expense, by a legal practitioner of his choice.

(5) A statement made to a Representative in the course of an interview under this section shall not, in any proceedings, be used in evidence against the person making the statement.

(6) Where the competent authority of a requesting party so requests, the Authority may, in writing, authorise a Representative to be present when an Inspector is carrying out his functions and powers under section 44B of the Income Tax Ordinance or any other person or authority is carrying out similar tax-related functions or powers under an enactment.

### **Protection of persons disclosing confidential information**

8. (1) A person who divulges any confidential information or makes any statement for the purposes of a request shall be deemed not to commit any

offence under any law by reason only of such disclosure or the making of such statement, and such disclosure or statement shall be deemed not to be a breach of any confidential relationship between that person and any other person.

(2) No civil claim or action whatsoever shall lie against a person who makes a disclosure or statement referred to in subsection (1) or against such person's principal or employer by reason of such disclosure or statement.

### **Confidentiality with regard to a request**

9. (1) The particulars of and all matters relating to a request shall be treated as confidential, and no person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any or in any way becomes aware of a request, shall disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with the Agreement. *(Amended by Act 11 of 2011)*

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both; or
- (b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

*(Substituted by Act 12 of 2014)*

### **Service of documents**

10. For the purposes of this Part and the Agreement, the service of any notice or document shall be sufficient if delivered by hand or posted by registered post to the registered or other officer of the addressee and affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate shall be deemed sufficient proof of such service. *(Amended by Act 16 of 2005)*

## PART II

### EUROPEAN UNION TAXATION OF SAVINGS INCOME

#### **Interpretation for Part II**

11. (1) In this Part, unless the context otherwise requires—

“Article” means an Article of the Directive;

“Directive” means the Directive of the Council of the European Union known as Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, as set out in Schedule 2;

“Member State” means a country that is a member of the European Union and includes the Virgin Islands;

“Minister” means the Minister to whom responsibility for finance is assigned;

“residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to section 15;

“UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

(2) Unless the context otherwise requires or this Part expressly provides to the contrary—

- (a) an expression that is defined in the Directive shall have the same meaning in this Part as that given to it in the Directive;
- (b) where the Directive provides for the construction of an expression therein, that expression shall be construed in accordance with those provisions for the purposes of this Part.

(3) Notwithstanding Article 5, a reference to “competent authority” in this Part or in the Directive shall, unless the context otherwise requires, be construed as a reference to the Financial Secretary or any person or authority designated by him under section 13.

(4) A reference in the Directive to an economic operator shall be construed in accordance with such rules, regulations or guidelines as may be made by the Minister and any such rules, regulations or guidelines made shall be published in the *Gazette*.

(5) For the purposes of the definition of “interest payment” in Article 6—

- (a) “interest” includes income mentioned in Article 6(1)(d) only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments defined in Article 6(1)(a) and (b);
- (b) “interest payment” as defined in Article 6(1)(c) and (d) does not include income referred to therein from an undertaking for collective investment established within the Virgin Islands that is equivalent to an UCITS where the investment in debt claims referred to in Article 6(1)(a) of such undertaking has not exceeded fifteen per cent of its assets;
- (c) interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within the Virgin Islands shall not be considered as an interest payment under Article 6(4) where the investment of such an entity in debt claims referred to in Article 6(1)(a) has not exceeded fifteen per cent of its assets.

*(Inserted by Act 16 of 2005)*

### **Implementation of the Directive**

12. (1) This Part shall apply for the purpose of giving effect to the Directive.

(2) Where any provision of this Part is inconsistent with a provision of the Directive, this Part shall prevail.

(3) Where the Directive is amended by the Council of the European Union and the amendment is adopted by the Government of the United Kingdom, the Minister may, where he considers it necessary in the public interest to do so, by Order subject to an affirmative resolution of the Legislative Council, make provisions to give effect to the amendment, including such modifications to this Part or Schedule 2 as are specified in the Order.

*(Inserted by Act 16 of 2005)*

### **Competent authority**

**13.** (1) The Financial Secretary shall be the competent authority for the purposes of this Part and in relation to the implementation of the Directive.  
*(Inserted by Act 11 of 2011)*

(2) The Financial Secretary may, in writing and after the approval of the Minister, designate any person or authority to perform the functions of the competent authority under this Part and the Directive.

(3) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter.

*(Inserted by Act 16 of 2005)*

### **Identity of beneficial owner**

**14.** (1) A paying agent shall establish the identity of a beneficial owner in accordance with this section.

(2) Where the paying agent and the recipient of the interest entered into contractual relations before the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner and, if any, the tax identification number allocated to the beneficial owner by his Member State of residence for tax purposes.

(4) Subject to subsection (5), a paying agent shall establish the details specified in subsection (3) on the basis of the passport or the official identity card presented by the beneficial owner.

(5) Where the address or the tax identification number of a beneficial owner does not appear on his passport or official identity card, the paying agent shall establish the address or the tax identification number, as the case may be, on the basis of any other documentary proof of identity presented by the beneficial owner.

(6) Where the tax identification number of a beneficial owner does not appear on his passport, his official identity card or any other documentary proof presented by him, the paying agent shall establish the date and place of birth of the beneficial owner on the basis of the passport or the official identity card presented by the beneficial owner.

*(Inserted by Act 16 of 2005)*

### **Residence of beneficial owner**

**15.** (1) A paying agent shall establish the residence of a beneficial owner in accordance with this section.

(2) Where the paying agent and the recipient of the interest entered into contractual relations before the coming into force of this Part, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Subject to subsection (4), where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the residence of the beneficial owner on the basis of the passport, the official identity card or, if necessary, any other documentary proof of identity presented by the beneficial owner.

(4) Where a beneficial owner presents a passport or official identity card issued by a Member State and declares himself to be resident in a third country, the paying agent shall establish the residence of the beneficial owner on the basis of a tax residence certificate issued by a competent tax authority of the third country in which the beneficial owner claims to be resident, and if the beneficial owner fails to present such a certificate, the paying agent shall treat the Member State which issued the passport or other official identity document as the residence of the beneficial owner.

(5) Where a question arises as to whether or not a tax residence certificate or other equivalent document issued by a competent tax authority of a third country is valid, the decision of the competent authority shall be conclusive on the subject.

*(Inserted by Act 16 of 2005)*

### **Withholding tax**

**16.** (1) Subject to this section, a paying agent established in the Virgin Islands shall levy a withholding tax on interest payments made by that paying agent to beneficial owners who are individuals resident for tax purposes in another Member State.

(2) The rate of withholding tax to be levied under subsection (1) shall be as follows—

- (a) from 1st July, 2005 to 31st December, 2007, fifteen per cent;
  - (b) from 1st January, 2008 to 31st December, 2010, twenty per cent;
- and

(c) from 1st January, 2011, thirty-five per cent.

(3) A paying agent shall levy withholding tax as follows—

(a) in the case of an interest payment within the meaning of Article 6(1)(a), on the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c), on the amount of income referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 6(4), on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(4) For the purposes of subsection (3)(a) and (b), withholding tax shall be levied *pro rata* to the period of holding of the debt claim by the beneficial owner and where the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

(5) An economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in a Member State, other than the Virgin Islands, shall for the purposes of this section, be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated to the competent authority of the Member State where the entity is established.

(6) Where an entity referred to in subsection (5) has entered into a formal agreement referred to in that subsection, the economic operator paying interest to, or securing interest for, the entity shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its Member State of establishment, which shall pass that information on to the competent authority of the Member State where the entity is established.

(7) A paying agent shall not levy withholding tax under this section in any case where a beneficial owner expressly authorises the paying agent, in writing, to report information in accordance with section 17, and in any such case, the paying agent and the competent authority shall report information in respect of that beneficial owner in accordance with that section as if that section were in force.

(8) A paying agent shall pay the withholding tax levied by it to the competent authority.

(9) The Government of the Virgin Islands shall retain twenty-five per cent of the withholding tax collected by it for its own use and shall transfer the remaining seventy-five per cent—

- (a) in the case of withholding tax levied under subsection (1), to the Member State that is the residence of the beneficial owner of the interest on which the withholding tax was levied; and
- (b) in the case of withholding tax levied under subsection (5), to the other Member States proportionate to the transfers carried out pursuant to paragraph (a).

(10) Transfers of withholding tax levied shall—

- (a) in the case of transfers under subsection (9)(a), be made within a period of six months following the end of the tax year of the Virgin Islands; and
- (b) in the case of transfers under subsection (9)(b), be made within a period of six months following the end of the tax year of the Member State where the relevant economic operator is established.

(11) This section shall cease to have effect upon the coming into force of section 17.

*(Inserted by Act 16 of 2005)*

### **Exchange of information**

17. (1) This section shall come into force on such date as the Minister may, by Order published in the *Gazette*, appoint.

(2) Where the beneficial owner of interest is resident in a Member State other than the Virgin Islands, the paying agent shall report to the competent authority—

- (a) the identity and residence of the beneficial owner established in accordance with sections 14 and 15;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest; and
- (d) information concerning the interest payment in accordance with subsection (3).

(3) Reports of information concerning interest payments shall distinguish between the following categories of interest and indicate—

- (a) in the case of an interest payment within the meaning of Article 6(1)(a), the amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 6(1)(c), either the amount of income referred to in that paragraph or the full amount of the distribution;

(d) in the case of an interest payment within the meaning of Article 6(4), the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(4) The competent authority shall—

(a) at least once a year and within six months following the end of each tax year of the Virgin Islands, and

(b) without requiring a request to do so,

communicate to the competent authority of the Member State that is the residence of the beneficial owner, the information reported under subsections (2) and (3) in respect of that beneficial owner.

*(Inserted by Act 16 of 2005)*

### **Confidentiality**

18. (1) Information established or reported by a paying agent in accordance with this Part shall be treated as confidential, and no person shall disclose any such information except in accordance with this Part.

*(Inserted by Act 16 of 2005)*

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

*(Substituted by Act 12 of 2014)*

### **Application of agreement with Member State**

19. (1) Where, pursuant to the Directive, the Government of the Virgin Islands enters into an agreement with the Government of a Member State to implement the provisions of the Directive, the provisions of this Part shall be applied in accordance with that agreement, notwithstanding any inconsistency with a provision of the Directive. *(Amended by Act 11 of 2011)*

(2) An agreement referred to in subsection (1) may be in the form set out in Schedule 3.

*(Inserted by Act 16 of 2005)*

### **Use of information**

20. (1) Any information transmitted by or to a Member State shall be used only for the purpose for which it was provided.

(2) The Government of the Virgin Islands may unilaterally suspend the operation of an agreement referred to in section 19 on the grounds that information transmitted pursuant to the agreement has been used for a purpose other than that for which it was provided.

*(Inserted by Act 16 of 2005)*

## PART III

**Interpretation for Part III**

**21.** (1) In this Part, unless the context otherwise requires—

“Common Reporting Standard” means the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development as set out in Schedule 3<sup>1</sup> but, if that standard is subsequently amended by any modification made to it and published by the Organisation for Economic Co-Operation and Development, it means that standard as so amended; *(Inserted by Act 17 of 2015)*

“Group Annuity Contract” means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group; *(Inserted by Act 8 of 2018)*

“Group Cash Value Insurance Contract” means a Cash Value Insurance Contract that—

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group; *(Inserted by Act 8 of 2018)*

“Pre-existing Account” means—

- (a) a Financial Account maintained by a Reporting Financial Institution as of 31st December 2015;
- (b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if—
  - (i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9)(a) of Section VIII of the Common Reporting Standard;
  - (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under subparagraph C(9)(a) of Section VIII of the Common

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<sup>1</sup> Available on the Organisation for Economic Co-Operation and Development website at <http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-commonreporting-standard.pdf>

Reporting Standard, as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the Common Reporting Standard, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

- (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a) of Section VIII of the Common Reporting Standard; and
- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the Common Reporting Standard;

*(Inserted by Act 8 of 2018)*

“Related Entity” in relation to two Entities, means—

- (a) either Entity controls the other Entity;
- (b) the two Entities are under common control; or
- (c) the two Entities are Investment Entities described in subparagraph A(6)(b) of Section VIII of the Common Reporting Standard, are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity;

*(Inserted by Act 8 of 2018)*

“relevant Agreement” means an agreement that permits the automatic exchange of information for tax purposes and is an agreement to which Part I applies by virtue of an Order made under section 3(3); *(Inserted by Act 17 of 2015)*

“Reporting Financial Institution” means a Financial Institution that is not a Non-Reporting Financial Institution; and *(Inserted by Act 8 of 2018)*

“Standardised Industry Coding System” means a coding system used to classify establishments by business type for purposes other than tax purposes. *(Inserted by Act 8 of 2018)*

“Virgin Islands Financial Institution” means—

- (a) any Financial Institution that is resident in the Virgin Islands, but excludes any branch of that Financial Institution that is located outside the Virgin Islands; and
- (b) any branch of a Financial Institution that is not resident in the Virgin islands, if that branch is located in the Virgin Islands;

*(Inserted by Act 8 of 2018)*

(2) Unless the context otherwise requires or this Part expressly provides to the contrary—

- (a) an expression that is defined in the Common Reporting Standard shall have the same meaning in this Part as that given to it in the Common Reporting Standard;
- (b) where the Common Reporting Standard provides for the construction of an expression therein, that expression shall be construed in accordance with those provisions for the purposes of this Part.

*(Inserted by Act 17 of 2015)*

### **Competent Authority**

**22.** (1) The Financial Secretary shall be the competent authority for the purposes of this Part and in relation to the implementation of the Common Reporting Standard.

(2) The Financial Secretary may, in writing and after the approval of the Minister, designate any person or authority to perform the functions of the competent authority under this Part and the Common Reporting Standard.

(3) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter.

*(Inserted by Act 17 of 2015)*

### **Non-Reportable Accounts. Schedule 6**

**23.** (1) An account listed as an Excluded Account in Schedule 6 of the Act is not a Reportable Account for the purposes of this Part.

(2) The Minister may, with the approval of Cabinet, by Order published in the *Gazette* amend, Schedule 6 and the Order shall be subject to a negative resolution of the House of Assembly.

*(Inserted by Act 17 of 2015)*

### **General rule for accounts**

**24.** (1) A Reporting Financial Institution must treat an account balance with a negative value as having a nil value.

(2) If the balance or value of an account is denominated in a currency other than US dollars, a Reporting Financial Institution must translate the relevant US dollar threshold amount into the other currency by reference to the spot rate of exchange on the date for which the Reporting Financial Institution is determining that threshold amount.

*(Inserted by Act 17 of 2015)*

### **Common Reporting Standard commentary**

**25.** (1) For the purposes of this Part the Common Reporting Standard commentary made and published by the Organisation and Development is an integral part of the Common Reporting Standard and accordingly applies for the purposes of the automatic exchange of financial account information under a relevant agreement.

(2) The Competent Authority may issue guidance to aid compliance with this Part.

(3) The Competent Authority must at least once every calendar year publish in the *Gazette* a list of Participating Jurisdictions and Reportable Jurisdictions for the purposes of the Common Reporting Standards. *(Amended by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

### **Application of the Common Reporting Standard**

**26.** (1) With effect from the 1st January, 2016 the Common Reporting Standard applies for the purposes of automatic exchange of financial account information under a relevant Agreement.

(2) Accordingly, from that date the Common Reporting Standard forms parts of the laws of the Virgin Islands.

(3) All Virgin Islands Financial Institutions shall apply the Common Reporting Standard in accordance with this Act. *(Inserted by Act 8 of 2018)*

(4) Where this Act is silent the Common Reporting Standard shall apply. *(Inserted by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

### **Policies and procedures to be established by Virgin Islands Financial Institutions**

**27.** (1) A Virgin Islands Financial Institution shall establish, implement and maintain written policies and procedures to comply with this Act.

(2) The policies and procedures established pursuant to subsection (1) shall provide for the following—

- (a) identifying each jurisdiction in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of the jurisdiction that is of a similar character of either of those taxes;
- (b) applying the due diligence procedures set out in the Common Reporting Standard; and
- (c) ensuring that any information obtained in accordance with this Act or a record of the steps taken to comply with this Act in respect of a Financial Account is kept for at least six years from the end of the year to which the information relates or during which the steps were taken.

(3) A Virgin Islands Financial Institution is deemed to have contravened the policies and procedures relating to self-certification or to documentary evidence if the Virgin Islands Financial Institution—

- (a) knows, or has reason to believe, the self-certification or documentary evidence is inaccurate in a material way from its policies and procedures; and
- (b) it files a return that relies on the accuracy of such a self-certification or based on documentary evidence.

(4) A Virgin Islands Financial Institution that fails to establish and maintain policies and procedures designed to identify Reportable Accounts in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.

*(Substituted by Act 8 of 2018)*

**Obligation to register** *(Amended by Act 8 of 2018)*

**28.** (1) A Virgin Islands Financial Institution shall register with the Competent Authority. *(Substituted by Act 8 of 2018)*

(2) In doing so the Virgin Islands Financial Institution must provide to the Competent Authority—

- (a) the name of the Virgin Islands Financial Institution;
- (b) the categorisation of the Virgin Islands Financial Institution as determined in accordance with the Common Reporting Standard; and
- (c) the full name, address, designation and contact details of the individual authorised by the Virgin Islands Financial Institution to be the Virgin Islands Financial Institution's principal point of contact for all purposes of compliance with this Part and the Common Reporting Standard.

*(Amended by Act 8 of 2018)*

(3) Existing Virgin Islands Financial Institutions shall register with the Competent Authority by 30th April, 2019 or if a Virgin Islands Financial Institution became a Virgin Islands Financial Institution after the coming into force of this Act, it shall register with the Competent Authority by the 30th April in the first calendar year following which the Virgin Islands Financial Institution became a Virgin Islands Financial Institution. *(Substituted by Act 8 of 2018)*

(4) The Virgin Islands Financial Institution must do so electronically in a form required by the Competent Authority. *(Amended by Act 8 of 2018)*

(5) A Reporting Financial Institution must register the Competent Authority immediately of any change to the information provided under subsection (2). *(Amended by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

(6) A Virgin Islands Financial Institution that fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars. *(Inserted by Act 8 of 2018)*

**Obligation to file a return** *(Amended by Act 8 of 2018)*

**29.** (1) A Virgin Islands Financial Institution shall, in respect of each calendar year following the coming into force of this Act, file a return—

- (a) setting out the information required to be reported under the Common Reporting Standard in respect of each Reportable Account maintained by the Virgin Islands Financial Institution at any time during that year; or
- (b) if no Reportable Account is maintained, a nil return.

*(Substituted by Act 8 of 2018)*

(2) The first reporting year for the purposes of the Common Reporting Standard is the calendar year 2016. *(Amended by Act 8 of 2018)*

(3) A Reporting Financial Institution must make a return under this Part on or before 31st May of the year following the calendar year to which the return relates. *(Amended by Act 8 of 2018)*

(4) A Virgin Islands Financial Institution shall file a return under this Part on or before 31st May of each calendar year following the calendar year to which the return relates. *(Substituted by Act 8 of 2018)*

(5) A Virgin Islands Financial Institution that fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars. *(Inserted by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

### **Form of return**

**30.** (1) A Virgin Islands Financial Institution shall file a return under section 29 electronically using a form and in a manner specified by the Competent Authority that incorporates an electronic validation process. *(Amended by Act 8 of 2018)*

(2) The Competent Authority must treat a return filed otherwise than in accordance with subsection (1) as not having been filed. *(Amended by Act 8 of 2018)*

(3) The Competent Authority must assume unless the contrary is proved that—

- (a)* the use of the electronic return system specified by the Competent Authority resulted in a return having been filed if the return was recorded by the electronic validation process of the system;
- (b)* the return was filed at the time recorded by the electronic validation process; and
- (c)* the person who filed the return is the person identified as doing so by the electronic return system.

(4) The Competent Authority must assume that a return filed on behalf of a Virgin Islands Financial Institution was filed by the Virgin Islands Financial Institution, unless the Virgin Islands Financial Institution proves that the return was filed without the Virgin Islands Financial Institution's authority. *(Amended by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

### **Appointment of Third Parties**

**31.** (1) A Virgin Islands Financial Institution may appoint a person as the Virgin Islands Financial Institution's agent to carry out the duties and obligations imposed on the Virgin Islands Financial Institution by this Part. *(Amended by Act 8 of 2018)*

(2) If it does so, the Virgin Islands Financial Institution must ensure that the Virgin Islands Financial Institution continues to have access to and is able to produce to the Competent Authority records and documentary evidence used to identify and report on Reportable Accounts. *(Amended by Act 8 of 2018)*

(3) The Virgin Islands Financial Institution is responsible for any failure of the person to carry out the Virgin Islands Financial Institution's obligations. *(Amended by Act 8 of 2018)*

*(Inserted by Act 17 of 2015)*

### **Compliance measures**

**32.** (1) The Competent Authority may require a Virgin Islands Financial Institution—

- (a) within a time specified by the Competent Authority, to provide to it information, including but not limited to, a copy of a relevant book, document or other record, or of electronically stored information; or
- (b) at a time specified by the Competent Authority, to make available to it for inspection, a book, document or other record, or any electronically stored information, that is in the Virgin Islands Financial Institution's possession or under the Virgin Islands Financial Institution's control which the Competent Authority reasonably requires to determine if information submitted to the Competent Authority under this Part was correct and complete.

*(Amended by Act 8 of 2018)*

(2) If—

- (a) information the Competent Authority wants or wants to inspect, is outside the Virgin Islands; and
- (b) the Competent Authority requires the Virgin Islands Financial Institution to bring it to the Virgin Islands within a time that will enable it to do so,

the Virgin Islands Financial Institution must comply with the requirement.

*(Amended by Act 8 of 2018)*

(3) A Virgin Islands Financial Institution must retain for six years a book, document or other record, including any stored by electronic means, that relates to the information required to be reported to the Competent Authority under this Part. *(Amended by Act 8 of 2018)*

(4) The Competent Authority may inspect the due diligence procedures implemented by a Virgin Islands Financial Institution or perform an inquiry into the due diligence procedures of the Virgin Islands Financial Institution. *(Inserted by Act 8 of 2018)*

(5) Where the Competent Authority inspects or performs an inquiry on a Virgin Islands Financial Institution in accordance with subsection (4) it may where necessary, advise the Financial Services Commission. *(Inserted by Act 8 of 2018)*

(6) Any person who wilfully or knowingly signs (or otherwise positively affirms) a false self-certification commits an offence. *(Inserted by Act 8 of 2018)*  
*(Inserted by Act 17 of 2015)*

### **Rules for applying the Common Reporting Standard**

**32A.** (1) A Virgin Islands Financial Institution may apply the due diligence procedures under the Common Reporting Standard for—

(a) New Accounts to Pre-existing Accounts; and

(b) High Value Accounts to Lower Value Accounts.

(2) Where a Virgin Islands Financial Institution applies the due diligence procedures in accordance with subsection (1) it may do so either with respect to all relevant Pre-existing Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location where the account is maintained).

(3) Where a Virgin Islands Financial Institution applies the due diligence procedures in accordance with subsection (1)(a) the rules otherwise applicable to Pre-existing Accounts outlined in the Common Reporting Standard continue to apply.

(4) A Virgin Islands Financial Institution may apply—

(a) either the residence address test or the electronic record search set forth in subparagraphs B(2) through (6) of Section III of the Common Reporting Standard; or

(b) only the electronic record search.

(5) Where a Virgin Islands Financial Institution applies the residence address test in accordance with subsection (4) it shall apply such a test with respect to each Lower Value Account or clearly identified group of such accounts as permitted by law.

(6) Where a Virgin Islands Reporting Financial Institution does not apply the residence address test in accordance with subsection (4) or one or more of the test requirements are not satisfied, then the Virgin Islands Financial Institution shall perform the electronic record search with respect to the Lower Value Account.

(7) A Virgin Islands Financial Institution may exclude from its due diligence procedures Pre-existing Accounts for an entity with an account balance or value that does not exceed of two hundred and fifty thousand dollars as of the 31st December, 2015 and if, at the end of a subsequent calendar year, the account balance or value exceeds two hundred and fifty thousand dollars, the Virgin Islands Financial Institution shall apply the due diligence procedures.

(8) A Virgin Islands Financial Institution may treat a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements—

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employees;
- (b) the employees are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee or beneficiary does not exceed one million dollars.

(9) A Virgin Islands Financial Institution may use as Document Evidence any classification in the Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Virgin Islands Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purpose (other than for tax purposes) and that was implemented by the Virgin Islands Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Virgin Islands Financial Institution does not know or have reason to know that such classification is incorrect or unreliable.

(10) For the purposes of this part a Virgin Islands Financial Institution may align the scope of the beneficiary of a trust treated as a Controlling Person of the trust with the scope of the beneficiary of a trust treated as a Reportable Person of a trust that is a Virgin Islands Financial Institution.

(11) A Virgin Islands Financial Institution acting pursuant to subsection (10) must ensure that the Virgin Islands Financial Institution have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enable the trust to report such beneficiary as a Controlling Person.

(12) A Virgin Islands Financial Institution exercising any options under this section shall keep an internal record of such an option as part of the policies and procedures which they are required to have in place in accordance with section 27.

*(Inserted by Act 8 of 2018)*

### **Application of agreement signed to implement the Common Reporting Standard**

**33.** (1) Where, pursuant to the Common Reporting Standard, the Government of the Virgin islands enters into an agreement to implement the provisions of the Common Reporting Standard, the provisions of this Part shall be applied in accordance with that agreement, notwithstanding any inconsistency with the provision of the Common Reporting Standard.

(2) An agreement referred to in subsection (1) may be in the form set out in Schedule 5.

*(Inserted by Act 17 of 2015)*

### **Anti-avoidance**

**34.** If—

- (a) a person enters into any arrangements, and

- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under this Part,

this Part is to have effect as if the arrangement or arrangements had not been entered into.

*(Inserted by Act 17 of 2015)*

#### PART IV

### **Interpretation for Part IV**

**35.** In this Part, unless the context otherwise requires—

“Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;

“Constituent Entity” means—

- (a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
- (b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the MNE Group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 750 million Euro during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;

“Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

“Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

“International Agreement” means the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which

the Virgin Islands is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

“Multinational Enterprises (MNE) Group” means any Group that—

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an Excluded MNE Group;

“Qualifying Competent Authority Agreement” means an agreement—

- (a) that is between authorised representatives of those jurisdictions that are parties to an International Agreement; and
- (b) that requires the automatic exchange of country-by-country reports between the party jurisdictions;

“Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in section 39 in its jurisdiction of tax residence on behalf of the MNE Group, and such entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in section 37(2)(b);

“Reporting Fiscal Year” means that Fiscal Year, on or after the 1st January, 2018, the financial and operational results of which are reflected in the country-by-country report defined in section 39;

“Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in section 37(2)(b) applies;

“Systemic Failure” with respect to a jurisdiction, means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with the Virgin Islands, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to the Virgin Islands’ country-by-country reports in its possession of MNE Groups that have Constituent Entities in the Virgin Islands;

“Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria—

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and

- (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

*(Inserted by Act 8 of 2018)*

### **Competent Authority**

36. The International Tax Authority shall be the Competent Authority for the purposes of this Part and in relation to the implementation of Base Erosion and Profit Shifting in the Virgin Islands.

*(Inserted by Act 8 of 2018)*

### **Obligation to file: Country-by-Country reports**

37. (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands shall file a country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in section 40.

(2) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in section 40, if the following criteria are satisfied—

- (a) the entity is resident for tax purposes, in the Virgin Islands; and
- (b) one of the following conditions applies—
  - (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
  - (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Virgin Islands is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Virgin Islands is a party by the time specified in section 40 for filing the country-by-country report for the Reporting Fiscal Year; or
  - (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Competent Authority to the Constituent Entity resident for tax purposes in the Virgin Islands.

(3) Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the Virgin Islands and one or more of the conditions set out in subsection (2)(b) applies, the MNE Group may designate one of the Constituent Entities to file the country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to any Reporting Fiscal Year on or before the date specified in section 40 and to notify the Competent Authority that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the Virgin Islands.

(4) Notwithstanding subsection (2), when one or more of the conditions set out in subsection (2)(b) applies, an entity described in subsection (2) shall not be required to file a country-by-country report with the Competent Authority with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report conforming to the requirements of section 39 with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in section 40 and that satisfies the following conditions—

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of section 39;
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the Virgin Islands is a party by the time specified in section 40 for filing the country-by-country report for the Reporting Fiscal Year;
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Competent Authority of a Systemic Failure;
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with section 38(1) by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and
- (e) a notification has been provided to the Competent Authority in accordance with section 38(2).

*(Inserted by Act 8 of 2018)*

### **Registration Requirement**

**38.** (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands shall register with the Competent Authority whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

(2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall register with the Competent Authority of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

(3) A Constituent Entity of an MNE Group shall do so electronically in a form required by the Competent Authority.

(4) A Constituent Entity of an MNE Group shall register the Competent Authority immediately of any change to the information provided under subsection (2).

(5) A Constituent Entity of an MNE which fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.

*(Inserted by Act 8 of 2018)*

### **Country-by-Country Report**

39. (1) For purposes of this Part, a country-by-country report with respect to an MNE Group is a report containing—

- (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates.
- (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.

(2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Final Report.

*(Inserted by Act 8 of 2018)*

### **Time for Filing**

40. The country-by-country report required for this Part shall be filed no later than twelve months after the last day of the Reporting Fiscal Year of the MNE Group.

*(Inserted by Act 8 of 2018)*

### **Use of Confidentiality of Country-by-Country Report Information**

41. (1) The Competent Authority shall use the country-by-country report as necessary for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Virgin Islands, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis, if applicable.

(2) For the purposes of subsection (1), transfer pricing adjustments by the Competent Authority will not be based on the country-by-country Report.

(3) Notwithstanding subsection (1), the Competent Authority shall use the country-by-country Report and any other information obtained pursuant to this Act for the purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement.

(4) The Competent Authority shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

*(Inserted by Act 8 of 2018)*

**General penalty**

**42.** (1) Where an obligation is created under this Act in respect of a person (other than the Authority or any person acting in accordance with his directive) for which a penalty is not prescribed, a failure to comply with the obligation shall constitute an offence. *(Amended by Act 8 of 2018)*

(1A) Any person who willfully or knowingly provides any false or inaccurate information to the Competent Authority commits an offence. *(Inserted by Act 8 of 2018)*

(2) A person who contravenes subsections (1) and (1A) commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or
- (b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

*(Substituted by Act 12 of 2014 and amended by Act 8 of 2018)*

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## **SCHEDULE 1**

*(Section 2(1))*

### **THE U.S.A. AGREEMENT**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, INCLUDING THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, (“the parties”), desiring to facilitate the exchange of information relating to taxes, have agreed as follows:

#### ARTICLE 1

##### **SCOPE OF AGREEMENT**

The competent authorities of the parties shall provide assistance through exchange of information relating to the administration and enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that may be relevant to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax evasion in relation to such persons. The territorial scope of this Agreement, in respect of the United Kingdom, is the territory of the British Virgin Islands.

#### 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 party, or whether the person by whom the information is held is a resident or national of a 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

##### **TAX COVERED**

The taxes covered by this Agreement are in the case of the United States of America, federal income taxes; and in the case of the British Virgin Islands,

such taxes as may from time to time, be imposed by law; provided that the types of tax covered may be extended by agreement between the competent authorities in the form of an exchange of letters.

#### ARTICLE 4

##### DEFINITIONS

In this Agreement –

“competent authority” means, for the United States of America, the Secretary of the Treasury or his delegate, and for the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;

“criminal tax evasion” means wilfully, with dishonest intent to defraud the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred. The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability, and the conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either party. The competent authorities shall agree on the scope and extent falling within this definition;

“information” means any fact, statement, document or record in whatever form;

“information gathering measures” means judicial, regulatory or administrative procedures enabling a requested party to obtain and provide the information requested;

“items subject to legal privilege” means:

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made –
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the items are in the possession of a person who is entitled to possession of them. Items held with the intention of furthering a criminal purpose are not subject to legal privilege, and nothing in this Article shall prevent a professional legal adviser from providing the name and address of a client where doing so would not constitute a breach of legal privilege;

“person” means a natural person, a company or any other body or group of persons;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“tax” means any tax covered by this Agreement.

## ARTICLE 5

### EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a 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 advise the competent authority of the requesting party of that fact with suggestions of the additional information 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 information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, 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 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 beneficial ownership of companies, partnerships and other persons.

5. 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 relevance of the information sought to the request:

- (a) the name of the authority seeking the information or conducting the investigation or proceeding to which the request relates;
- (b) the identity of the taxpayer under examination or investigation;
- (c) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought;

- (d) the tax purposes for which the information is sought;
- (e) the period of time with respect to which the information is requested;
- (f) reasonable 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 and may be relevant to the tax purposes of the request;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting 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.

6. 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, the competent authority of the requested party shall:

- (a) confirm 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;
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within a reasonable period relative to the nature 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 to explain the reasons for its inability or the obstacles or its refusal.

## ARTICLE 6

### TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. The requested party may, to the extent permitted under its domestic laws, 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 prior 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 permit representatives of the competent authority of the requesting party to be present when a tax examination is being carried out 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.

#### 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, 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 of the requested party.

2. This Agreement shall not impose upon a party any obligation to provide items subject to legal privilege, nor 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.

4. The requested party shall not be required to obtain and provide information which the requesting party would be unable to obtain in similar circumstances:

- (a) under its own laws for the purpose of the enforcement of its own tax laws; or
- (b) in response to a valid request from the requested party under this Agreement.

#### ARTICLE 8

##### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the parties shall be kept confidential and shall be disclosed only to persons or authorities (including judicial, administrative and, in the case of the United States, Congressional oversight authorities or, in the case of the British Virgin Islands, a select committee of the Legislative Council) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. Except as provided in paragraph 1, information provided under this Agreement shall not be disclosed to any third 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, provided and to the extent that these are not so burdensome or time-consuming as to act as impediments to access to the information.

#### ARTICLE 10

##### **ADMINISTRATION COSTS OR DIFFICULTIES**

1. The requesting party shall reimburse the requested party for direct out of pocket costs of processing each request (including direct out of pocket costs of litigation directly relating to such request), as agreed by the parties.

2. In the event that compliance with the obligations under this Agreement occasions undue difficulty for either party, either as a result of the number or complexity of requests, the respective competent authorities shall consult with a view to resolving the difficulty under Article 11.

#### ARTICLE 11

##### **MUTUAL AGREEMENT PROCEDURE**

Where difficulties or doubts arise between the 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.

#### ARTICLE 12

##### **ENTRY INTO FORCE**

1. This Agreement shall enter into force when each party has notified the other of the completion of its necessary internal procedures for entry into force. Upon entry into force it shall have effect for criminal tax evasion beginning on 1 January 2004, and with respect to all other matters covered in Article 1 beginning on 1 January 2006.

2. Upon entry into force, the provisions of the Agreement shall have effect with respect to criminal tax evasion for taxable periods commencing from 2003, and shall have effect with respect to all other matters for taxable periods commencing from 2006.

#### ARTICLE 13

##### **TERMINATION**

1. This Agreement shall remain in force until terminated by either party.

2. Either 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 party.

3. A party which terminates this Agreement 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.

Done at Washington, in duplicate, this 3<sup>rd</sup> day of April, 2002.

For the Government of  
the United States of  
America:

PAUL O'NEILL

For the Government of  
the United Kingdom of  
Great Britain and Northern  
Ireland:

CHRISTOPHER MEYER

For the Government of  
the British Virgin Islands:

F. J. SAVAGE

**COMPETENT AUTHORITY AGREEMENT BETWEEN THE  
DEPARTMENT OF THE TREASURY, UNITED STATES OF AMERICA  
AND THE MINISTRY OF FINANCE, BRITISH VIRGIN ISLANDS**

The Competent Authorities agree that “criminal tax evasion” as defined in Article 4 of the Tax Information Exchange Agreement (“the Agreement”) between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, shall be interpreted as follows:

1. “Criminal tax evasion” shall include, but not necessarily be limited to, the following offenses under U.S. law, provided that the conduct involved otherwise falls within the definition of criminal tax evasion provided in Article 4 of the Agreement:
  - A. attempting to evade or defeat the assessment or collection of a tax;
  - B. signing and filing a document, required by law to be filed to advise tax authorities of the amount of tax due, or pertaining to the collection or payment thereof, that is false as to any material matter;

- C. aiding or assisting in the preparation of a document, required by law to advise tax authorities of the amount of tax due, that is false as to any material matter, whether or not such falsity is with the knowledge or consent of the person authorized or required to present such document;
- D. corruptly obstructing or impeding, or endeavouring to obstruct or impede, the due administration of tax assessment and collection; and
- E. conspiring to commit any of the above-stated offenses or conspiring to defraud the government.

In determining whether any of these offenses “relates to a tax liability that is significant or substantial either as an absolute amount or in relation to an annual tax liability” (as required by the definition in Article 4 of the Agreement), it shall not be required that the tax liability in question (1) be owed by the perpetrator of the offense himself or itself (for example, where the perpetrator aids and assists in the preparation of another taxpayer’s document); (2) relate to the tax year referenced in the document forming the basis of the offense; or (3) be exactly determined or formally assessed at the time of the offense or the making of the request for assistance, provided that the request contains evidence of a tax liability sufficient to meet the requirements of the Agreement. Furthermore in the case of any above-stated offense which does not require an existing tax liability as an element, such as an offense described in B, C, D and perhaps E, the requesting party may show that the offense “relates to a tax liability that is significant or substantial either as an absolute amount or in relation to an annual tax liability” by establishing that the perpetrator had a tax evasion motive falling within this description.

- 2. The following factual circumstances, especially where they appear in a combination or pattern, shall be relevant to the Competent Authority’s determination whether the conduct described in a request constitutes a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities:
  - A. preparing, causing to be prepared, signing or filing any document that is (1) required by law to be filed to advise tax authorities of the amount of tax due and (2) false as to any matter necessary to the determination of such tax or having a tendency to impede the tax authorities in verifying or auditing the document;
  - B. keeping a double set of books, one of which is directed at establishing the true amount of tax due and the other of which is directed at establishing less than the true amount of tax due and is used to prepare, or is available to support, a false declaration to tax authorities regarding the amount of tax due;
  - C. making false entries or alterations, directed at establishing less than the true amount of tax due, to a set of books that is used to prepare, or is available to support, a false declaration to tax authorities regarding the amount of tax due;
  - D. creating false invoices or documents, or altering invoices or documents that are used to prepare, or are available to support, a

- false declaration to tax authorities regarding the amount of tax due;
- E. destroying books or records that establish the true amount of tax due;
  - F. concealing assets or sources of income that constitute evidence of, or that could be used to satisfy, the true amount of tax due; and
  - G. handling one's affairs to avoid making the usual records that constitute evidence of the true amount of tax due.

Department of Treasury  
Internal Revenue Service  
United States of America

Ministry of Finance  
Government of the  
British Virgin Islands

CAROL A. DUNAHOO  
Director, International  
Large and Mid-Size Business Division

FRANK J. SAVAGE  
Governor

Date: April 3, 2002

Date: April 3, 2002

**COMPETENT AUTHORITY AGREEMENT BETWEEN THE  
DEPARTMENT OF THE TREASURY, UNITED STATES OF AMERICA  
AND THE MINISTRY OF FINANCE, BRITISH VIRGIN ISLANDS**

With reference to the Tax Information Exchange Agreement (“the Agreement”) between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, the Competent Authorities agree as follows:

1. With reference to Article 5, Section 2 of the Agreement, in the event that a requesting party is unable to provide additional information as requested of it pursuant to the provisions of Article 5, Section 1, this circumstance may frustrate the information gathering measures available to the requested party.
2. Accordingly, it is understood by the parties that the Competent Authorities will work together in an effort to ensure that, where a request is received by the requested party, it is able to properly and effectively implement the appropriate information gathering measures.

Department of Treasury  
Internal Revenue Service  
United States of America

Ministry of Finance  
Government of the  
British Virgin Islands

CAROL A. DUNAHOO  
Director, International  
Large and Mid-Size Business Division

FRANK J. SAVAGE  
Governor

Date: April 3, 2002

Date: April 3, 2002

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**SCHEDULE 2**

*(Section 11(1))*

**COUNCIL DIRECTIVE 2003/48/EC  
of 3 June 2003  
on taxation of savings income in the form of interest payments**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas:

1. Articles 56 to 60 of the Treaty guarantee the free movement of capital.
2. Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.
3. By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.
4. In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.
5. In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in their Member State of residence on interest they receive in another Member State.
6. This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.
7. This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meetings of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.
8. The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial

owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

9. The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.
10. Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
11. The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.
12. In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
13. The scope of this Directive should be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, inter alia, of the issues relating to the taxation of pension and insurance benefits.
14. The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.
15. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.
16. The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.

17. In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During a transitional period, given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35 %, these three Member States should apply a withholding tax to the savings income covered by this Directive.
18. In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.
19. Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.
20. Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.
21. The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.
22. In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.
23. This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.
24. So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.
25. The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

26. This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### INTRODUCTORY PROVISIONS

#### ARTICLE 1

##### AIM

1. The ultimate aim of the Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing the interest.

#### ARTICLE 2

##### DEFINITION OF BENEFICIAL OWNER

1. For the purposes of this Directive, 'beneficial owner' means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:
  - (a) he acts as a paying agent within the meaning of Article 4(1); or
  - (b) he acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an entity referred to in Article 4(2) of this Directive and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its Member State of establishment, or
  - (c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2).
2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2). If the

paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

### ARTICLE 3

#### IDENTITY AND RESIDENCE OF BENEFICIAL OWNERS

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;

- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details shall be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or on that official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

3. The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner

by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 91/308/EEC;

- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

#### ARTICLE 4

##### DEFINITION OF PAYING AGENT

1. For the purposes of this Directive, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
2. Any entity established in a Member State to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that:
  - (a) it is a legal person, with the exception of those legal persons referred to in paragraph 5; or
  - (b) its profits are taxed under the general arrangements for business taxation; or
  - (c) it is an UCITS recognised in accordance with Directive 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another Member State which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its Member State of establishment, which shall pass this information on to the competent authority of the Member State where the entity is established.

3. The entity referred to in paragraph 2 shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c). The exercise of this option shall require a certificate to be issued by the Member State in which the entity is established and presented to the economic operator by that entity.

Member States shall lay down the detailed rules for this option for entities established in their territory.

4. Where the economic operator and the entity referred to in paragraph 2 are established in the same Member State, that Member State shall take the necessary measures to ensure that the entity complies with the provisions of this Directive when it acts as a paying agent.
5. The legal persons exempted from paragraph 2(a) are:
  - (a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

#### ARTICLE 5

##### DEFINITION OF COMPETENT AUTHORITY

For the purposes of this Directive, 'competent authority' means:

- (a) for Member States, any of the authorities notified by the Member States to the Commission;
- (b) for third countries, the competent authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

#### ARTICLE 6

##### DEFINITION OF INTEREST PAYMENT

1. For the purposes of this Directive, 'interest payment' means:
  - (a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);
  - (c) income deriving from interest payments either directly or through an entity referred to in Article 4(2), distributed by:
    - (i) an UCITS authorised in accordance with Directive 85/611/EEC,
    - (ii) entities which qualify for the option under Article 4(3),

- (iii) undertakings for collective investment established outside the territory referred to in Article 7;
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40 % of their assets in debt claims as referred to in (a):
  - (i) an UCITS authorised in accordance with Directive 85/611/EEC,
  - (ii) entities which qualify for the option under Article 4(3),
  - (iii) undertakings for collective investment established outside the territory referred to in Article 7.

However, Member States shall have the option of including income mentioned under (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

2. As regards paragraph 1(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
3. As regards paragraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40 %. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
4. When interest, as defined in paragraph 1, is paid to or credited to an account held by an entity referred to in Article 4(2), such entity not having qualified for the option under Article 4(3), it shall be considered an interest payment by such entity.
5. As regards paragraph 1(b) and (d), Member States shall have the option of requiring paying agents in their territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
6. By way of derogation from paragraphs 1(c) and (d), Member States shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within their territory where the investment in debt claims referred to in paragraph 1(a) of such entities has not exceeded 15 % of their assets. Likewise, by way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within their territory, where the

investment of such an entity in debt claims referred to in paragraph 1(a) has not exceeded 15 % of its assets.

The exercise of such option by a Member State shall be binding on other Member States.

7. The percentage referred to in paragraph 1(d) and paragraph 3 shall from 1 January 2011 be 25 %.
8. The percentages referred to in paragraph 1(d) and in paragraph 6 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## ARTICLE 7

### TERRITORIAL SCOPE

This Directive shall apply to interest paid by a paying agent established within the territory to which the Treaty applies by virtue of Article 299 thereof.

## CHAPTER II

### EXCHANGE OF INFORMATION

## ARTICLE 8

### INFORMATION REPORTING BY THE PAYING AGENT

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:
  - (a) the identity and residence of the beneficial owner established in accordance with Article 3;
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;
  - (d) information concerning the interest payment in accordance with paragraph 2.
2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of interest and indicate:
  - (a) in the case of an interest payment within the meaning of Article 6(1)(a): the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;

- (c) in the case of an interest payment within the meaning of Article 6(1)(c): either the amount of income referred to in that paragraph or the full amount of the distribution;
- (d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);
- (e) where a Member State exercises the option under Article 6(5): the amount of annualised interest.

However, Member States may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

## ARTICLE 9

### AUTOMATIC EXCHANGE OF INFORMATION

1. The competent authority of the Member State of the paying agent shall communicate the information referred to in Article 8 to the competent authority of the Member State of residence of the beneficial owner.
2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent, for all interest payments made during that year.
3. The provisions of Directive 77/799/EEC shall apply to the exchange of information under this Directive, provided that the provisions of this Directive do not derogate therefrom. However, Article 8 of Directive 77/799/EEC shall not apply to the information to be provided pursuant to this chapter.

## CHAPTER III

### TRANSITIONAL PROVISIONS

## ARTICLE 10

### TRANSITIONAL PERIOD

1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Belgium, Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member States in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

2. The transitional period shall end at the end of the first full fiscal year following the later of the following dates:
  - the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),
  - the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.
3. At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

## ARTICLE 11

### WITHHOLDING TAX

1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15 % during the first three years of the transitional period, 20 % for the subsequent three years and 35 % thereafter.
2. The paying agent shall levy withholding tax as follows:
  - (a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
  - (c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;

- (d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);
  - (e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest.
- 3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.
- 4. The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.
- 5. During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

## ARTICLE 12

### REVENUE SHARING

- 1. Member States levying withholding tax in accordance with Article 11(1) shall retain 25 % of their revenue and transfer 75 % of the revenue to the Member State of residence of the beneficial owner of the interest.
- 2. Member States levying withholding tax in accordance with Article 11(5) shall retain 25 % of the revenue and transfer 75 % to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.
- 3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.
- 4. Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

ARTICLE 13

**EXCEPTIONS TO THE WITHHOLDING TAX PROCEDURE**

1. Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:
  - (a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest paid to the beneficial owner by that paying agent; in such cases, the provisions of Article 9 shall apply;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes in accordance with paragraph 2.
2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:
  - (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

ARTICLE 14

**ELIMINATION OF DOUBLE TAXATION**

1. The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.
2. If interest received by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.
3. If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its

national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.

4. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

## ARTICLE 15

### NEGOTIABLE DEBT SECURITIES

1. During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross-up and early redemption clauses and

- where the paying agent as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2. Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

CHAPTER IV

MISCELLANEOUS AND FINAL PROVISIONS

ARTICLE 16

**OTHER WITHHOLDING TAXES**

This Directive shall not preclude Member States from levying other types of withholding tax than that referred to in Article 11 in accordance with their national laws or double-taxation conventions.

ARTICLE 17

**TRANSPOSITION**

1. Before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.
2. Member States shall apply these provisions from 1 January 2005 provided that:
  - (i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12).
3. The Council shall decide, by unanimity, at least six months before 1 January 2005, whether the condition set out in paragraph 2 will be met, having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Council does not decide that the condition will be met, it shall, acting unanimously on a proposal by the Commission, adopt a new date for the purposes of paragraph 2.
4. When Member States adopt the provisions necessary to comply with this Directive, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
5. Member States shall forthwith inform the Commission thereof and communicate to the Commission the main provisions of national law

which they adopt in the field covered by this Directive and a correlation table between this Directive and the national provisions adopted.

ARTICLE 18

**REVIEW**

The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports, the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

ARTICLE 19

**ENTRY INTO FORCE**

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

ARTICLE 20

**ADDRESSEES**

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 2003.

For the Council  
The President  
N. CHRISTODOULAKIS

**ANNEX**

**LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 15**

For the purposes of Article 15, the following entities will be considered to be a 'related entity acting as a public authority or whose role is recognised by an international treaty':

- entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarra) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragón) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia)

	Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	National Telecommunications Organisation National Railways Organisation Public Electricity Company
France	La Caisse d'amortissement de la dette sociale (CADES)(Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) Municipalities

- international entities:

European Bank for Reconstruction and Development  
European Investment Bank  
Asian Development Bank  
African Development Bank  
World Bank/IBRD/IMF  
International Finance Corporation  
Inter-American Development Bank  
Council of Europe Soc. Dev. Fund  
Euratom  
European Community  
Corporación Andina de Fomento (CAF) (Andean Development Corporation)  
Eurofima  
European Coal & Steel Community  
Nordic Investment Bank  
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

- entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

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### **SCHEDULE 3**

*(Section 19(2))*

**AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN THE  
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND [EU MEMBER STATE  
THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION]**

**WHEREAS:**

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of the European Union (hereinafter referred to as “the Council”) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1<sup>st</sup> July, 2005 provided that
  - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;

2. The British Virgin Islands (“BVI”) is not a member of the European Union and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;
4. The BVI has agreed to apply a withholding tax with effect from 1st July, 2005, provided the European Union Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;
5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive;
6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

**NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for**

- (a) the automatic exchange of information by the competent authority of [the Member State] to the competent authority of the BVI in the same manner as to the competent authority of a Member State;
- (b) the application by the BVI, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (c) the automatic exchange of information by the competent authority of the BVI to the competent authority of [the Member State] in accordance with Article 13 of the Directive;
- (d) the transfer by the competent authority of the BVI to the competent authority of [the Member State] of 75% of the revenue of the withholding tax in respect of interest payments made by a paying agent established in the BVI to an individual resident in [the Member State].

ARTICLE 1

**DEFINITIONS**

For the purposes of this Agreement, the term:

- (a) “competent authority”, when applied to the contracting parties means,
  - (i) in the case of the BVI, the Financial Secretary; and
  - (ii) in the case of [**the Member State**], \_\_\_\_\_;
- (b) “[**the Member State**]” means \_\_\_\_\_;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;
- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20<sup>th</sup> December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

ARTICLE 2

**WITHHOLDING OF TAX BY PAYING AGENTS**

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the BVI to beneficial owners within the meaning of Article 6 of this Agreement who are residents of [**the Member State**] shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement. The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

ARTICLE 3

**REPORTING OF INFORMATION BY PAYING AGENTS**

- (1) Where interest payments, as defined in Article 9 of this Agreement, are made by a paying agent established in [**the Member State**] to beneficial owners, as defined in Article 6 of this Agreement, who are residents of the BVI, or where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority
  - (a) the identity and residence of the beneficial owner established in accordance with Article 7 of this Agreement,
  - (b) the name and address of the paying agent,

- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests, and
- (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund paid to the beneficial owner within the tax year,

and [the Member State] shall comply with paragraph (2) of this Article.

- (2) Within six months following the end of their tax year, the competent authority of [the Member State] shall communicate to the competent authority of the BVI, automatically, the information referred to in paragraph 1 (a) – (d) of this Article, for all interest payments made during that year.

#### ARTICLE 4

##### EXCEPTIONS TO THE WITHHOLDING TAX PROCEDURE

- (1) The BVI when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:
  - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating
  - (i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
  - (ii) the name and address of the paying agent; and
  - (iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request, shall bear the date of request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the BVI in which the paying agent is established shall communicate the information referred to in Article 3(1) of this Agreement to the competent authority of [the Member State] as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

## ARTICLE 5

### BASIS OF ASSESSMENT FOR WITHHOLDING TAX

- (1) A paying agent established in the BVI shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
  - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that sub-paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
  - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
  - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
  - (e) where the BVI exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of sub-paragraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

- (3) The imposition of withholding tax by the BVI shall not preclude [**the Member State**] from taxing income in accordance with its national law.
- (4) During the transitional period, the BVI may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this Agreement.

## ARTICLE 6

### DEFINITION OF “BENEFICIAL OWNER”

- (1) For the purposes of this Agreement, “beneficial owner” means an individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not the beneficial owner when he
  - (a) acts as a paying agent within the meaning of Article 8(1) of this Agreement;
  - (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment; or
  - (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.
- (2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

## ARTICLE 7

### IDENTITY AND RESIDENCE OF BENEFICIAL OWNERS

- (1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement.

Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);

- (2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:
  - (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10<sup>th</sup> June, 1991 in the case of **[the Member State]** or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.
- (3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:
  - (a) for contractual relations entered into before 1<sup>st</sup> July, 2005 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of **[the Member State]**, or equivalent legislation in the case of the BVI;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner

and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

## ARTICLE 8

### DEFINITION OF “PAYING AGENT”

- (1) For the purposes of this Agreement, “paying agent” means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
- (2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that
  - (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article;
  - (b) its profits are taxed under the general arrangements for business taxation; or
  - (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

- (3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

- (4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.
- (5) The legal persons exempted from sub-paragraph (a) of paragraph (2) of this Article are,
  - (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

## ARTICLE 9

**DEFINITION OF “INTEREST PAYMENT”**

- (1) For the purposes of this Agreement, “interest payment” means
  - (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in sub-paragraph (a);
  - (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
    - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
    - (ii) an equivalent undertaking for collective investment established in the BVI;
    - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
    - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI; and
  - (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in sub-paragraph (a):
    - (i) an UCITS authorised in accordance with Directive 85/611/EEC;
    - (ii) an equivalent undertaking for collective investment established in the BVI;

- (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
- (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraph (1)(a) and (b) of this Article.

- (2) As regards paragraph (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraph (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph 1 of this Article interest paid or credited to an account of an entity referred to in Article 8(2) of this Agreement which has not qualified for the option under Article 8(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

- (7) The percentage referred to in paragraph 1(d) of this Article and paragraph 3 of this Article shall from 1st January, 2011 be 25%.
- (8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## ARTICLE 10

### WITHHOLDING TAX REVENUE SHARING

- (1) The BVI shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to **[the Member State]**.
- (2) The BVI levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to **[the Member State]** proportionate to the transfers carried out pursuant to paragraph (1) of this Article.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of the BVI.
- (4) The BVI levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

## ARTICLE 11

### ELIMINATION OF DOUBLE TAXATION

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by the BVI of the withholding tax to which this Agreement refers in accordance with the following provisions;
  - (a) if interest received by a beneficial owner has been subject to withholding tax in the BVI, **[the Member State]** shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, **[the Member State]** shall repay the excess amount of tax withheld to the beneficial owner;
  - (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited

before the procedure in sub-paragraph (a) of this Article is applied.

- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

## ARTICLE 12

### TRANSITIONAL PROVISIONS FOR NEGOTIABLE DEBT SECURITIES

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities
  - (a) which contain gross up and early redemption clauses; and
  - (b) where the paying agent as defined in Article 8 of this Agreement is established in a contracting party applying withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

- (2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

ARTICLE 13

**MUTUAL AGREEMENT PROCEDURE**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

ARTICLE 14

**CONFIDENTIALITY**

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party shall not be used for any purpose, other than for the purposes of direct taxation, without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

ARTICLE 15

**TRANSITIONAL PERIOD**

At the end of the transitional period as defined in Article 10(2) of the Directive the BVI shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of [**the Member State**] the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period the BVI elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

ARTICLE 16

**ENTRY INTO FORCE**

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.



## **ANNEX**

### **LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12**

For the purposes of Article 12, the following entities will be considered to be a “related entity acting as a public authority or whose role is recognised by an international treaty”:

#### **ENTITIES WITHIN THE EUROPEAN UNION:**

##### **Belgium**

- Vlaams Gewest (Flemish Region)
- Région wallonne (Walloon Region)
- Région bruxelloise/Brussels Gewest (Brussels Region)
- Communauté française (French Community)
- Vlaamse Gemeenschap (Flemish Community)
- Deutschsprachige Gemeinschaft (German-speaking Community)

##### **Spain**

- Xunta de Galicia (Regional Executive of Galicia)
- Junta de Andalucía (Regional Executive of Andalusia)
- Junta de Extremadura (Regional Executive of Extremadura)
- Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
- Junta de Castilla- León (Regional Executive of Castilla- León)
- Gobierno Foral de Navarra (Regional Government of Navarra)
- Govern de les Illes Balears (Government of the Balearic Islands)
- Generalitat de Catalunya (Autonomous Government of Catalonia)
- Generalitat de Valencia (Autonomous Government of Valencia)
- Diputación General de Aragón (Regional Council of Aragon)
- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)
- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
- Diputación Foral de Alava (Regional Council of Alava)

- Ayuntamiento de Madrid (City Council of Madrid)
- Ayuntamiento de Barcelona (City Council of Barcelona)
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
- Cabildo Insular de Tenerife (Island Council of Tenerife)
- Instituto de Crédito Oficial (Public Credit Institution)
- Instituto Catalán de Finanzas (Finance Institution of Catalonia)
- Instituto Valenciano de Finanzas (Finance Institution of Valencia)

**Greece**

- Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
- Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
- Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

**France**

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
- L'Agence française de développement (AFD) (French Development Agency)
- Réseau Ferré de France (RFF)(French Rail Network)
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
- Charbonnages de France (CDF) (French Coal Board)
- Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

**Italy**

- Regions
- Provinces
- Municipalities
- Cassa Depositi e Prestiti (Deposits and Loans Fund)

**Latvia**

- Pašvaldības (Local governments)

**Poland**

- gminy (communes)
- powiaty (districts)

- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (association of districts)
- województw (association of provinces)
- miasto stołeczne Warszawa (capital city of Warsaw)
- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
- Agencja Nieruchomości Rolnych (Agricultural Property Agency)

**Portugal**

- Região Autónoma da Madeira (Autonomous Region of Madeira)
- Região Autónoma dos Açores (Autonomous Region of Azores)
- Municipalities

**Slovakia**

- mestá a obce (municipalities)
- Železnice Slovenskej republiky (Slovak Railway Company)
- Štátny fond cestného hospodárstva (State Road Management Fund)
- Slovenské elektrárne (Slovak Power Plants)
- Vodohospodárska výstavba (Water Economy Building Company)

**INTERNATIONAL ENTITIES:**

- European Bank for Reconstruction and Development
- European Investment Bank
- Asian Development Bank
- African Development Bank
- World Bank / IBRD / IMF
- International Finance Corporation
- Inter-American Development Bank
- Council of Europe Social Development Fund
- EURATOM
- European Community
- Corporación Andina de Fomento (CAF) (Andean Development Corporation)
- Eurofima
- European Coal & Steel Community

- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

**ENTITIES IN THIRD COUNTRIES :**

The entities that meet the following criteria :

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- 3) Such public entity is a large and regular issuer of debt.
- 4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

**AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND [EU MEMBER STATE THAT IS TO APPLY THE WITHHOLDING TAX IN THE TRANSITIONAL PERIOD]**

**WHEREAS**

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of the European Union (hereinafter referred to as “the Council”) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1st July, 2005 provided that
  - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;
2. The British Virgin Islands (“BVI”) is not a member of the European Union and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;
4. The BVI has agreed to apply a withholding tax with effect from 1st July, 2005, provided the European Union Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;
5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive;
6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

**NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for**

- (a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive,
- (b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive, and
- (c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding tax levied under this Agreement,

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

## ARTICLE 1

### DEFINITIONS

For the purposes of this Agreement, the term

- (a) “competent authority”, when applied to the contracting parties means,
  - (i) in the case of the BVI, the Financial Secretary; and
  - (ii) in the case of [the Member State}, \_\_\_\_\_;
- (b) “[the Member State]” means \_\_\_\_\_;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;
- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20<sup>th</sup> December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

## ARTICLE 2

### WITHHOLDING TAX BY PAYING AGENTS

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the jurisdiction of a contracting party to beneficial owners within the meaning of Article 6 of this Agreement who are residents of the other contracting party shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the

amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement . The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

#### ARTICLE 3

##### **REPORTING OF INFORMATION BY PAYING AGENTS**

Where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority

- (a) the identity and residence of the beneficial owner established in accordance with Article 7 of this Agreement;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;
- (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund paid to the beneficial owner within the tax year.

#### ARTICLE 4

##### **EXCEPTIONS TO THE WITHHOLDING TAX PROCEDURE**

- (1) A contracting party when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:
  - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating

- (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner; and
- (b) the name and address of the paying agent; and
- (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request, shall bear the date of the request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the contracting party in which the paying agent is established shall communicate the information referred to in Article 3 of this Agreement to the competent authority of the contracting party of the country of residence of the beneficial owner. Such communication shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

## ARTICLE 5

### **BASIS OF ASSESSMENT FOR WITHHOLDING TAX**

- (1) A paying agent established in a contracting party shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
  - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that sub-paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
  - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
  - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
  - (e) where a contracting party exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of sub-paragraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the

period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

- (3) The imposition of withholding tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.
- (4) During the transitional period, the contracting party levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this Agreement.

#### ARTICLE 6

##### **DEFINITION OF “BENEFICIAL OWNER”**

- (1) For the purposes of this Agreement, “beneficial owner” means an individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not the beneficial owner when he
  - (a) acts as a paying agent within the meaning of Article 8(1) of this Agreement;
  - (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment; or
  - (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.
- (2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

## ARTICLE 7

**IDENTITY AND RESIDENCE OF BENEFICIAL OWNERS**

- (1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs 2 and 3;
- (2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:
  - (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10<sup>th</sup> June, 1991 in the case of **[the Member State]** or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.
- (3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:
  - (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of **[the Member State]** or equivalent legislation in the case of the BVI; and

- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official document shall be considered to be the country of residence.

## ARTICLE 8

**DEFINITION OF “PAYING AGENT”**

- (1) For the purposes of this Agreement, “paying agent” means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.
- (2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that
- (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article;
  - (b) its profits are taxed under the general arrangements for business taxation; or
  - (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

- (3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of

paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

- (4) Where the economic operator and the entity referred to in paragraph (2) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.
- (5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are,
  - (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

## ARTICLE 9

### DEFINITION OF “INTEREST PAYMENT”

- (1) For the purposes of this Agreement, “interest payment” means
  - (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in sub-paragraph (a);
  - (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
    - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
    - (ii) an equivalent undertaking for collective investment established in the BVI;
    - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
    - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI; and
  - (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective

investment or entities referred to below, more than 40% of their assets in debt claims as referred to in sub-paragraph (a):

- (i) an UCITS authorised in accordance with Directive 85/611/EEC; or
- (ii) an equivalent undertaking for collective investment established in the BVI.
- (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
- (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraph (1)(a) and (b) of this Article.

- (2) As regards paragraph 1(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards paragraph 1(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (4) When interest, as defined in paragraph 1 of this Article, is paid to or credited to an account held by an entity referred to in Article 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph 1(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraph 1(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in

paragraph 1 of this Article interest paid or credited to an account of an entity referred to in Article 8(2) of this Agreement which has not qualified for the option under Article 8(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

- (7) The percentage referred to in paragraph 1(d) of this Article and paragraph 3 of this Article shall from 1st January, 2011 be 25%.
- (8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

#### ARTICLE 10

##### **WITHHOLDING TAX REVENUE SHARING**

- (1) A contracting party which applies withholding tax shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.
- (2) A contracting party levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.
- (4) A contracting party levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

#### ARTICLE 11

##### **ELIMINATION OF DOUBLE TAXATION**

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding tax to which this Agreement refers in accordance with the following provisions:
  - (a) if interest received by a beneficial owner has been subject to withholding tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;

- (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in sub-paragraph (a) of this Article is applied.
- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph 1 of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

## ARTICLE 12

**TRANSITIONAL PROVISIONS FOR NEGOTIABLE DEBT SECURITIES**

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities
- (a) which contain gross up and early redemption clauses; and
- (b) where the paying agent as defined in Article 8 of this Agreement is established in a contracting party applying withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

- (2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

## ARTICLE 13

**MUTUAL AGREEMENT PROCEDURE**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

## ARTICLE 14

**CONFIDENTIALITY**

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party shall not be used for any purpose, other than for the purposes of direct taxation, without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

## ARTICLE 15

**TRANSITIONAL PERIOD**

– At the end of the transitional period as defined in Article 10(2) of the Directive the contracting parties shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period either of the contracting parties elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

## ARTICLE 16

**ENTRY INTO FORCE**

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.



## ANNEX

### LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12

For the purposes of Article 12, the following entities will be considered to be a “related entity acting as a public authority or whose role is recognised by an international treaty”:

#### ENTITIES WITHIN THE EUROPEAN UNION:

##### Belgium

- Vlaams Gewest (Flemish Region)
- Région wallonne (Walloon Region)
- Région bruxelloise/Brussels Gewest (Brussels Region)
- Communauté française (French Community)
- Vlaamse Gemeenschap (Flemish Community)
- Deutschsprachige Gemeinschaft (German-speaking Community)

##### Spain

- Xunta de Galicia (Regional Executive of Galicia)
- Junta de Andalucía (Regional Executive of Andalusia)
- Junta de Extremadura (Regional Executive of Extremadura)
- Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
- Junta de Castilla- León (Regional Executive of Castilla- León)
- Gobierno Foral de Navarra (Regional Government of Navarra)
- Govern de les Illes Balears (Government of the Balearic Islands)
- Generalitat de Catalunya (Autonomous Government of Catalonia)
- Generalitat de Valencia (Autonomous Government of Valencia)
- Diputación General de Aragón (Regional Council of Aragon)
- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)
- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)

- Diputación Foral de Alava (Regional Council of Alava)
- Ayuntamiento de Madrid (City Council of Madrid)
- Ayuntamiento de Barcelona (City Council of Barcelona)
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
- Cabildo Insular de Tenerife (Island Council of Tenerife)
- Instituto de Crédito Oficial (Public Credit Institution)
- Instituto Catalán de Finanzas (Finance Institution of Catalonia)
- Instituto Valenciano de Finanzas (Finance Institution of Valencia)

**Greece**

- Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
- Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
- Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

**France**

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
- L'Agence française de développement (AFD) (French Development Agency)
- Réseau Ferré de France (RFF)(French Rail Network)
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
- Charbonnages de France (CDF) (French Coal Board)
- Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

**Italy**

- Regions
- Provinces
- Municipalities
- Cassa Depositi e Prestiti (Deposits and Loans Fund)

**Latvia**

- Pašvaldības (Local governments)

**Poland**

- gminy (communes)

- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (association of districts)
- województw (association of provinces)
- miasto stołeczne Warszawa (capital city of Warsaw)
- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
- Agencja Nieruchomości Rolnych (Agricultural Property Agency)

**Portugal**

- Região Autónoma da Madeira (Autonomous Region of Madeira)
- Região Autónoma dos Açores (Autonomous Region of Azores)
- Municipalities

**Slovakia**

- mestá a obce (municipalities)
- Železnice Slovenskej republiky (Slovak Railway Company)
- Štátny fond cestného hospodárstva (State Road Management Fund)
- Slovenské elektrárne (Slovak Power Plants)
- Vodohospodárska výstavba (Water Economy Building Company)

**INTERNATIONAL ENTITIES:**

- European Bank for Reconstruction and Development
- European Investment Bank
- Asian Development Bank
- African Development Bank
- World Bank / IBRD / IMF
- International Finance Corporation
- Inter-American Development Bank
- Council of Europe Social Development Fund
- EURATOM
- European Community
- Corporación Andina de Fomento (CAF) (Andean Development Corporation)
- Eurofima

- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

**ENTITIES IN THIRD COUNTRIES :**

The entities that meet the following criteria :

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- 3) Such public entity is a large and regular issuer of debt.

The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

*(Inserted by Act 16 of 2005)*

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**SCHEDULE 4**

*(Section 26)*

**COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL  
ACCOUNT INFORMATION**

**Section I: General Reporting Requirements**

- A. Subject to paragraphs C through E, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:
  1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
  2. the account number (or functional equivalent in the absence of an account number);

3. the name and identifying number (if any) of the Reporting Financial Institution;
  4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
  5. in the case of any Custodial Account:
    - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  7. in the case of any account not described in subparagraph A (5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account or with respect to each Financial Account that is opened prior to becoming a Reportable Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.
- D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.
- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the

electronically searchable data maintained by the Reporting Financial Institution.

## **Section II: General Due Diligence Requirements**

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. A Reporting Financial Institution, which pursuant to the procedures described in Sections II through VII, identifies any account as a Foreign Account that is not a Reportable Account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.
- C. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.
- D. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- E. Reporting Financial Institutions may apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where New Account due diligence procedures are used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

## **Section III: Due Diligence for Preexisting Individual Accounts**

The following procedures apply with respect to Preexisting Individual Accounts.

### **A. Accounts Not Required to be Reviewed, Identified, or Reported.**

A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.

- B. **Lower Value Accounts.** The following procedures apply with respect to Lower Value Accounts.
  1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.
  2. **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically

searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):

- a)* identification of the Account Holder as a resident of a Foreign Jurisdiction;
  - b)* current mailing or residence address (including a post office box) in a Foreign Jurisdiction;
  - c)* one or more telephone numbers in a Foreign Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
  - d)* standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Foreign Jurisdiction;
  - e)* currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction; or
  - f)* a “hold mail” instruction or “in-care-of ” address in a Foreign Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
4. If any of the indicia listed in subparagraph B(2)(*a*) through (*e*) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
5. If a “hold mail” instruction or “in-care-of ” address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(*a*) through (*e*) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.
6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Foreign Jurisdiction if:
  - a)* the Account Holder information contains a current mailing or residence address in the Foreign Jurisdiction, one or more

telephone numbers in the Foreign Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

- i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; and
  - ii) Documentary evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.
- b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
- i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; or
  - ii) Documentary evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.

C. **Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search.** with respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).
2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in subparagraph B(2):
  - a) the most recent Documentary Evidence collected with respect to the account;
  - b) the most recent account opening contract or documentation;
  - c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;



- elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
- c) If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
6. If a Preexisting Individual Account is not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Foreign Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Preexisting High Value Individual Accounts must be completed by 31 December 2016. Review of Preexisting Lower Value Individual Accounts must be completed by 31 December 2017.

- E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

#### **Section IV: Due Diligence for New Individual Accounts**

The following procedures apply with respect to New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

#### **Section V: Due Diligence for Preexisting Entity Accounts**

The following procedures apply with respect to Preexisting Entity Accounts.

- A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December 2015, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of the last day of any subsequent calendar year.
- B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of 31 December 2015, and a Preexisting Entity Account that does not exceed USD 250 000 as of 31 December 2015 but the aggregate account balance or value of which exceeds USD 250 000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required.** For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures:

1. **Determine the Residence of the Entity.**
  - a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the Account Holder's residence. For this purpose, information indicating that the Account Holder's residence includes a place of incorporation or organisation, or an address in a Foreign Jurisdiction.
  - b) If the information indicates that the Account Holder is a Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
2. **Determine the Residence of the Controlling Persons of a Passive NFE.** With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Controlling Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account is treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs C(2)(a) through (c) in the order most appropriate under the circumstances.
  - a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
  - b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
  - c) Determining the residence of a Controlling Person of a Passive NFE. For the purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on:
    - i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000; or

- ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes. If a self-certification is not provided, the Reporting Financial Institution will establish such residence(s) by applying the procedures described in paragraph C of Section III.

**D. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250 000 as of 31 December 2015 must be completed by 31 December 2017.
2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December 2015, but exceeds USD 250 000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph C.

**Section VI: Due Diligence for New Entity Accounts**

The following procedures apply with respect to New Entity Accounts.

**A. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required.** For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures:

1. **Determine the residence of the Entity.**
  - a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
  - b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

2. **Determine the Residence of the Controlling Persons of a Passive NFE.** With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must identify whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.
  - a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Reporting Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
  - b) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
  - c) **Determining the residence of a Controlling Person of a Passive NFE.** For purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## **Section VII: Special Due Diligence Rules**

The following additional rules apply in implementing the due diligence procedures described above:

- A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person.

A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements: (i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders; (ii) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and (iii) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1 000 000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

### **C. Account Balance Aggregation and Currency Rules.**

- 1. Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
- 2. Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the

Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

### **Section VIII: Defined Terms**

The following terms have the meanings set forth below:

#### **A. Reporting Financial Institution**

1. The term “**Reporting Financial Institution**” means any Participating Jurisdiction Financial Reporting Financial Institution that is not a Non-Reporting Financial Institution.
2. The term “**Participating Jurisdiction Financial Institution**” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term “**Custodial Institution**” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term “**Depository Institution**” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term “**Investment Entity**” means any Entity:

- a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - ii) individual and collective portfolio management; or
  - iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

7. The term "**Financial Asset**" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.
8. The term "**Specified Insurance Company**" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

## **B. Non-Reporting Financial Institution**

1. The term "**Non-Reporting Financial Institution**" means any Financial Institution that is:

- a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
  - b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
  - c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;
  - d) an Exempt Collective Investment Vehicle; or
  - e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term “**Governmental Entity**” means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.
- a) An “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  - b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
    - i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
    - ii) the Entity’s net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

- iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
  - c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
3. The term “**International Organisation**” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.
4. The term “**Central Bank**” means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.
5. The term “**Broad Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
- a) does not have a single beneficiary with a right to more than five per cent of the fund's assets;
  - b) is subject to government regulation and provides information reporting to the tax authorities; and
  - c) satisfies at least one of the following requirements:
    - i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
    - ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
    - iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other

retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a), or penalties apply to distributions or withdrawals made before such specified events; or

- iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
6. The term “**Narrow Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
- a) the fund has fewer than 50 participants;
  - b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
  - c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
  - d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of the fund’s assets; and
  - e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term “**Pension Fund of a Governmental Entity, International Organisation or Central Bank**” means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
8. The term “**Qualified Credit Card Issuer**” means a Financial Institution satisfying the following requirements:
- a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
  - b) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000

is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term “**Exempt Collective Investment Vehicle**” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

### C. Financial Account

1. The term “**Financial Account**” means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
  - a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
  - b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and
  - c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

2. The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
3. The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person.

4. The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term “**Insurance Contract**” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
6. The term “**Annuity Contract**” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term “**Cash Value Insurance Contract**” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.
8. The term “**Cash Value**” means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract:
  - a) solely by reason of the death of an individual insured under a life insurance contract;
  - b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or

- e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term “**Preexisting Account**” means:
- a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015;
- b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
- i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9)(a);
- ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
- iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a); and
- iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the CRS.
10. The term “**New Account**” means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016.
11. The term “**Preexisting Individual Account**” means a Preexisting Account held by one or more individuals.
12. The term “**New Individual Account**” means a New Account held by one or more individuals.
13. The term “**Preexisting Entity Account**” means a Preexisting Account held by one or more Entities.
14. The term “**Lower Value Account**” means a Preexisting Individual Account with an aggregate balance or value as of 31 December 2015 that does not exceed USD 1 000 000.

15. The term “**High Value Account**” means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1,000 000 as of 31 December 2015 or 31 December of any subsequent year.
16. The term “**New Entity Account**” means a New Account held by one or more Entities.
17. The term “**Excluded Account**” means any of the following accounts:
  - a) a retirement or pension account that satisfies the following requirements:
    - i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
    - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
    - iii) information reporting is required to the tax authorities with respect to the account;
    - iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
    - v) either (i) annual contributions are limited to USD 50 000 or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- b) an account that satisfies the following requirements:
  - i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

- iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- iv) annual contributions are limited to USD 50 000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
  - i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
  - ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
  - iv) the contract is not held by a transferee for value.
- d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- e) an account established in connection with any of the following:
  - i) a court order or judgment.
  - ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that

- is deposited in the account in connection with the sale, exchange, or lease of the property;
- ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - iii) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
  - iv) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
  - v) the account is not associated with an account described in subparagraph C(17)(f).
- iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
  - iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- f) a Depository Account that satisfies the following requirements:
- i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - ii) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
- g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is defined in domestic law as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

**D. Reportable Account**

1. The term “**Reportable Account**” means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
2. The term “**Reportable Person**” means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term “**Reportable Jurisdiction Person**” means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term “**Reportable Jurisdiction**” means a jurisdiction (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and (ii) which is identified in a published list.
5. The term “**Participating Jurisdiction**” means a jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and (ii) which is identified in a published list.
6. The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term “**NFE**” means any Entity that is not a Financial Institution.
8. The term “**Passive NFE**” means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term “**Active NFE**” means any NFE that meets any of the following criteria:
  - a) less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period

- are assets that produce or are held for the production of passive income;
- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
  - d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
  - e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
  - f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
  - g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
  - h) the NFE meets all of the following requirements:
    - i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
    - ii) it is exempt from income tax in its jurisdiction of residence;
    - iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

- iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
- v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

#### E. Miscellaneous

1. The term "**Account Holder**" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
2. The term "**AML/KYC Procedures**" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term "**Entity**" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a "**Related Entity**" of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.
5. The term "**TIN**" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term "**Documentary Evidence**" includes any of the following:

- a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
- b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
- c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
- d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

7. The term "**Foreign Jurisdiction**" means any jurisdiction other than the jurisdiction of the Reporting Financial Institution.

### **Section IX: Effective Implementation**

- A. A jurisdiction must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:
  1. rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
  2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;
  3. administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;

4. administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
5. effective enforcement provisions to address non-compliance.

*(Inserted by Act 17 of 2015)*

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## SCHEDULE 5

*(Section 33)*

**MODEL AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF  
[JURISDICTION A] AND [JURISDICTION B] ON THE AUTOMATIC EXCHANGE OF  
FINANCIAL ACCOUNT INFORMATION TO IMPROVE  
INTERNATIONAL TAX COMPLIANCE**

Whereas, the Government of [Jurisdiction A] and the Government of [Jurisdiction B] have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to improve international tax compliance by further building on that relationship;

Whereas, the laws of their respective jurisdictions [are expected to require]/[require]/[require or are expected to require] financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Section 2 of this Agreement and the reporting and due diligence procedures contained in the Annex;

Whereas, [Article [...] of the Income Tax Convention between [Jurisdiction A] and [Jurisdiction B]/[Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters] (the “Convention”)]/[other applicable legal instrument (the “Instrument”)], authorises the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of [Jurisdiction A] and [Jurisdiction B] (the “Competent Authorities”) to agree the scope and modalities of such automatic exchanges;

Whereas, [Jurisdiction A] and [Jurisdiction B] have in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the [Convention]/[Instrument], and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement);

Whereas, the Competent Authorities desire to conclude an agreement to improve international tax compliance based on reciprocal automatic exchange pursuant to the [Convention]/[Instrument], and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the [Convention]/[Instrument];

Now, therefore, the Competent Authorities have agreed as follows:

## SECTION 1

### *Definitions*

1. For the purposes of this agreement (“Agreement”), the following terms have the following meanings:

- a) The term “[Jurisdiction A]” means [...].
- b) The term “[Jurisdiction B]” means [...].
- c) The term “Competent Authority” means:
  - (1) in the case of [Jurisdiction A], [...]; and
  - (2) in the case of [Jurisdiction B], [...].
- d) The term “[Jurisdiction A] Financial Institution” means (i) any Financial Institution that is resident in [Jurisdiction A], but excludes any branch of that Financial Institution that is located outside [Jurisdiction A], and (ii) any branch of a Financial Institution that is not resident in [Jurisdiction A], if that branch is located in [Jurisdiction A].
- e) The term “[Jurisdiction B] Financial Institution” means (i) any Financial Institution that is resident in [Jurisdiction B], but excludes any branch of that Financial Institution that is located outside [Jurisdiction B], and (ii) any branch of a Financial Institution that is not resident in [Jurisdiction B], if that branch is located in [Jurisdiction B].
- f) The term “Reporting Financial Institution” means any [Jurisdiction A] Financial Institution or [Jurisdiction B] Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
- g) The term “Reportable Account” means a [Jurisdiction A] Reportable Account or a [Jurisdiction B] Reportable Account, as the context requires, provided it has been identified as such pursuant to due diligence procedures, consistent with the Annex, in place in [Jurisdiction A] or [Jurisdiction B].
- h) The term “[Jurisdiction A] Reportable Account” means a Financial Account that is maintained by a [Jurisdiction B] Reporting Financial Institution and held by one or more [Jurisdiction A] persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a [Jurisdiction A] Reportable Person.
- i) The term “[Jurisdiction B] Reportable Account” means a Financial Account that is maintained by a [Jurisdiction A] Reporting Financial Institution and held by one or more [Jurisdiction B] persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a [Jurisdiction B] Reportable Person.

- j) The term “[Jurisdiction A] Person” means an individual or Entity that is identified by a [Jurisdiction B] Reporting Financial Institution as resident in [Jurisdiction A] pursuant to due diligence procedures consistent with the Annex, or an estate of a decedent that was a resident of [Jurisdiction A]. 14
- k) The term “[Jurisdiction B] Person” means an individual or Entity that is identified by a [Jurisdiction A] Reporting Financial Institution as resident in [Jurisdiction B] pursuant to due diligence procedures consistent with the Annex, or an estate of a decedent that was a resident of [Jurisdiction B].
- l) The term “TIN” means a [Jurisdiction A] TIN or a [Jurisdiction B] TIN, as the context requires.
- m) The term “[Jurisdiction A] TIN” means a [...].
- n) The term “[Jurisdiction B] TIN” means a [...].

2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time under the law of the jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Annex. Any term not otherwise defined in this Agreement or in the Annex will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction applying this Agreement, any meaning under the applicable tax laws of that jurisdiction prevailing over a meaning given to the term under other laws of that jurisdiction.

## SECTION 2

### *Exchange of Information with Respect to Reportable Accounts*

1. Pursuant to the provisions of Article [...] of the [Convention]/[Instrument] and subject to the applicable reporting and due diligence rules consistent with the Annex, each Competent Authority will annually exchange with the other Competent Authority on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.

2. The information to be exchanged is, in the case of [Jurisdiction A] with respect to each [Jurisdiction B] Reportable Account, and in the case of [Jurisdiction B] with respect to each [Jurisdiction A] Reportable Account:

- a) the name, address, TIN and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Annex, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN of the Entity and the name, address, TIN and date and place of birth of each Reportable Person;
- b) the account number (or functional equivalent in the absence of an account number);

- c) the name and identifying number (if any) of the Reporting Financial Institution;
- d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- e) in the case of any Custodial Account:
  - (1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
  - (2) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

### SECTION 3

#### *Time and Manner of Exchange of Information*

1. For the purposes of the exchange of information in Section 2, the amount and characterization of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction exchanging the information.
2. For the purposes of the exchange of information in Section 2, the information exchanged will identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Section 2, information is to be exchanged with respect to [xxxx] and all subsequent years and will be exchanged within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing sentence information is only required to be exchanged with respect to a calendar year if both jurisdictions have in effect

legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange provided for in Section 2 and the reporting and due diligence procedures contained in the Annex.

4. Notwithstanding paragraph 3, the information to be exchanged with respect to [xxxx] is the information described in paragraph 2 of Section 2, except for gross proceeds described in subparagraph 2(e)(2) of Section 2.
5. The Competent Authorities will automatically exchange the information described in Section 2 in a common reporting standard schema in Extensible Markup Language.
6. The Competent Authorities will agree on one or more methods for data transmission including encryption standards.

#### SECTION 4

##### ***Collaboration on Compliance and Enforcement***

A Competent Authority will notify the other Competent Authority when the first mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Annex. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

#### SECTION 5

##### ***Confidentiality and Data Safeguards***

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the [Convention]/[Instrument], including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Competent Authority as required under its domestic law.
2. Each Competent Authority will notify the other Competent Authority immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed.

#### SECTION 6

##### ***Consultations and Amendments***

1. If any difficulties in the implementation or interpretation of this Agreement arise, either Competent Authority may request consultations to develop appropriate measures to ensure that this Agreement is fulfilled.
2. This Agreement may be amended by written agreement of the Competent Authorities. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the later of the signatures of such written agreement or the date of the later of the notifications exchanged for purposes of such written agreement.

## SECTION 7

***Term of Agreement***

1. This Agreement will come into effect [...]/[on the date of the later of the notifications provided by each Competent Authority that its jurisdiction has the necessary laws in place to implement the Agreement].
2. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to the other Competent Authority that it has determined that there is or has been significant non-compliance by the other Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the [Convention]/[Instrument], a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as NonReporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.
3. Either Competent Authority may terminate this Agreement by giving notice of termination in writing to the other Competent Authority. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the [Convention/Instrument].

Signed in duplicate in [...] on [...].

COMPETENT AUTHORITY FOR  
[Jurisdiction A]:

COMPETENT AUTHORITY FOR  
[Jurisdiction B]:”.

*(Inserted by Act 17 of 2015)*

**SCHEDULE 6**

*(Section 23)*

**EXCLUDED ACCOUNTS****Dormant Accounts**

1. (1) A dormant account (other than an annuity contract) with a balance that does not exceed US\$1,000 is an Excluded account.

(2) An account is a dormant account if—

- (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the Reporting Financial Institution in the previous three years,
- (b) the account holder has not communicated with the Reporting Financial Institution regarding the account or any other account

held by the account holder with the Reporting Financial Institution in the previous six years,

- (c) notwithstanding the provisions of the Dormant Accounts Act, the account is treated as dormant under the Virgin Islands Financial Institutions normal operating procedures that are consistently applied for all accounts maintained provided that such are in line with the definition of a dormant account found in the CRS Commentary on Section III paragraph 9; and (*Substituted by Act 8 of 2018*)
- (d) in the case of a cash value insurance contract, the Reporting Financial Institution has not communicated with the account holder regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years.

*(Inserted by Act 17 of 2015)*

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