

**VIRGIN ISLANDS**  
**MUTUAL LEGAL ASSISTANCE (TAX MATTERS) (NO.2) ORDER, 2010**

**ARRANGEMENT OF SECTIONS**

*Section*

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

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2010 NO. 13**

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

**Mutual Legal Assistance (Tax Matters) (No. 2) Order, 2010**

[Gazetted 1<sup>st</sup> April, 2010]

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

Citation.           **1.** This Order may be cited as the Mutual Legal Assistance (Tax Matters) (No. 2) Order, 2010.

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

## SCHEDULE

[Section 2]

### 1.

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

#### **EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE VIRGIN ISLANDS CONCERNING AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES AND THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

- to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;
- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term “Agreement” in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that the other party may suspend the operation of either, or both, Agreements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term “prejudicial or restrictive measures” it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

Please accept, Sir, the assurance of our highest consideration,

Gillian Merron  
Parliamentary Under-Secretary of State, Foreign & Commonwealth Office

For the Government of the United Kingdom

Signed in London on 29<sup>th</sup> October 2008.

Madam,

I have the honour to acknowledge receipt of your letter dated 29<sup>th</sup> October 2008, which reads as follows:

“Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

- to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;
- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term “Agreement” in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that the other party may suspend the operation of either, or both, Agreements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term “prejudicial or restrictive measures” it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

Please accept, Sir, the assurance of our highest consideration,”

I am able to confirm that the contents of your letter dated 29<sup>th</sup> October 2008 and Appendices 1 and 2 thereto are acceptable to the Government of the Virgin Islands and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the said Agreements.

Please accept, Madam, the assurance of my highest consideration.

Ralph T O’Neal OBE  
Premier

For the Government of the Virgin Islands  
Signed in London on 29<sup>th</sup> October 2008.

**AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN  
ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

Whereas –

the United Kingdom and the Virgin Islands (“the parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

the Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and have subsequently actively participated in the OECD Global Forum on Taxation;

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

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

**ARTICLE 1**

**SCOPE OF AGREEMENT**

The competent authorities of the parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

**ARTICLE 2**

**JURISDICTION**

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested party:

- (a) without regard to whether the person to whom the information relates is a resident of a party, or whether the person by whom the information is held is a resident 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**

#### **TAXES COVERED**

1. The taxes covered by this Agreement are:

(a) in the case of the United Kingdom,

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the capital gains tax;
- (iv) the inheritance tax; and
- (v) the value added tax

(b) in the case of the Virgin Islands,

- (i) the income tax;
- (ii) the payroll tax; and
- (iii) the land and house tax

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

### **ARTICLE 4**

#### **DEFINITIONS**

1. In this Agreement unless the context otherwise requires-



- (a) “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;
- (b) “Virgin Islands” means the territory of the Virgin Islands;
- (c) “citizen” means –
  - (i) in relation to the United Kingdom, any person who is a British citizen otherwise than by virtue of a connection with the Virgin Islands, or is a British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;
  - (ii) in relation to the Virgin Islands, any person who belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Virgin Islands;
- (d) “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
- (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) “competent authority” means
  - (i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
  - (ii) in the case of the Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other laws;
- (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;
- (i) “information” means any fact, statement, document or record in whatever form;

- (j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a party to obtain and provide the requested information;
- (k) “party” means the United Kingdom or the Virgin Islands as the context requires;
- (l) “person” includes an individual (“natural person”), a company, or any other body or group of persons;
- (m) “public collective investment scheme” means any collective scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;
- (p) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that party, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

## **ARTICLE 5**

### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of 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 and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for the information, the requested party shall use all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the ownership of companies, partnerships and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the parties to obtain or provide:

- (i) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
- (ii) information relating to a period more than six years prior to the tax period under consideration;
- (iii) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. The competent authority of the requesting party shall provide the following information to the competent authority of the requested party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the requesting party would prefer to receive the information;

- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting party;
- (e) 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;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a declaration that the request is in conformity with this Agreement and the laws and administrative practices of the requesting party, and that if the requested information were within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice;
- (h) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested party shall forward the requested information as promptly as possible to the competent authority of the requesting party. To ensure a prompt response:

- (a) the competent authority of the requested party shall confirm the receipt of a request in writing to the competent authority of the requesting party and shall notify the competent authority of the requesting party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, or for its refusal.

## **ARTICLE 6**

### **TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD**

1. The requested party may, to the extent permitted under its domestic laws, and following reasonable notice from the requesting party, allow representatives of the competent authority of

the requesting party to enter the territory of the requested party in connection with a request to interview persons and examine records with the 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, in accordance with its domestic laws, permit representatives of the competent authority of the requesting party to be present at the appropriate part of a tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 of this Article is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination in accordance with its domestic laws.

## **ARTICLE 7**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested party may decline to assist:

- (a) where the request is not made in conformity with this Agreement; or
- (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or
- (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.

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

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

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

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

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

5. The requested party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting party, the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

6. The requested party may decline a request for information if the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, which discriminates against a resident or citizen of the requested party as compared with a resident or citizen of the requesting party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

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

3. Information provided to a requesting party shall not be disclosed to any other jurisdiction.

## **ARTICLE 9**

### **SAFEGUARDS**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party. However, these rights and safeguards may not be applied by the requested party in a manner that unduly prevents or delays effective exchange of information.

## **ARTICLE 10**

## **ADMINISTRATIVE COSTS**

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities in a Memorandum of Understanding.

## **ARTICLE 11**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the efforts referred to in paragraph 1 of this Article, the competent authorities of the parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the parties may communicate with each other directly for the purposes of reaching agreement under this Article.
4. The parties may also agree on other forms of dispute resolution.

## **ARTICLE 12**

### **ENTRY INTO FORCE**

Each of the parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The provisions of this Agreement shall have effect:

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

## **ARTICLE 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 terminations 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. If the Agreement is terminated the parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.



**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN ISLANDS THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands;

Recognising that the two Governments have concluded an Agreement for the exchange of information relating to taxes; and

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income;

Have agreed as follows:

**Article 1**

**Persons covered**

This Agreement shall apply to individuals who are residents of one or both of the parties.

**Article 2**

**Taxes covered**

The taxes to which this Agreement shall apply are the United Kingdom income tax and any taxes which are identical or substantially similar to it which are imposed by either party after the date of signature of this Agreement. In the case of the United Kingdom such taxes may be in addition to, or in place of, the income tax. The competent authorities of the parties shall notify each other of any significant changes that have been made in their taxation laws.

**Article 3**

**General definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;
  - b) “the Virgin Islands” means the territory of the Virgin Islands;

- c) “a party” and “the other party” mean the United Kingdom or the Virgin Islands, as the context requires;
  - d) “competent authority” means
    - i. in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
    - ii. in the Virgin Islands, the Financial Secretary or his or her authorised representative;
  - e) “tax” means any tax imposed by a party to which this Agreement applies and the terms “United Kingdom tax” and “Virgin Islands tax” should be construed accordingly.
2. As regards the application of this Agreement at any time by a party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that party for the purposes of taxes to which this Agreement applies, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

#### **Article 4**

##### **Resident**

1. For the purposes of this Agreement, the term “resident of a party” means
- a) in the case of the United Kingdom, any individual who, under its laws, is liable to tax therein by reason of his residence. This term, however, does not include any individual who is liable to tax in the United Kingdom in respect only of income or capital gains from sources therein;
  - b) in the case of the Virgin Islands, any individual who, under its laws, is liable to tax therein by reason of his residence. This term, however, does not include any individual who is liable to tax in the Virgin Islands in respect only of income from sources therein;
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both parties, then he shall be treated for the purposes of this Agreement as a resident of the United Kingdom only.

#### **Article 5**

## **Pensions**

1. Pensions and other similar remuneration paid to an individual who is a resident of a party, shall be taxable only in that party.
2. Notwithstanding the provisions of paragraph 1, such payments which arise in the United Kingdom may also be taxed in the United Kingdom where the recipient is not an individual who
  - a) belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678), or
  - b) has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap. 130), provided that the individual has lived outside the United Kingdom for at least the preceding ten years.

## **Article 6**

### **Government service**

1. a) Salaries, wages and other similar remuneration, other than pensions, paid by the Government of the Virgin Islands to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from United Kingdom tax if the individual is not resident in the United Kingdom or is resident in the United Kingdom solely for the purposes of rendering those services;  
  
b) Salaries, wages and other similar remuneration, other than pensions, paid by the Government of the United Kingdom or by a political subdivision or a local authority to an individual in respect of services rendered to that Government or subdivision or authority in the discharge of governmental functions shall be exempt from Virgin Islands tax if the individual is not resident in the Virgin Islands or is resident in the Virgin Islands solely for the purposes of rendering those services;
2. This Article does not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a party or a political subdivision or a local authority thereof.

## **Article 7**

### **Students**

Payments received by a student or business apprentice who is, or was immediately before visiting a party, a resident of other party, and who is temporarily present in the first-mentioned

party for the purposes of his full-time education at a university, college or other recognised educational institution of a similar nature, or for his full-time training, shall not be taxed in that party, provided that such payments arise from sources outside that party and are for the purpose of his maintenance, education or training. The exemption from tax provided by this Article shall apply to a business apprentice only for a period of time not exceeding one year from the date he first arrives in the first-mentioned party.

## **Article 8**

### **Elimination of double taxation**

1. Where a resident of a party derives income which, in accordance with the provisions of this Agreement, may be taxed in the other party, the first-mentioned party shall, subject to any provisions of its law regarding the allowance as a credit against its tax of tax payable in another territory (which shall not affect the general principle hereof), allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other party. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other party.
2. For the purposes of this Article, income owned by a resident of a party which may be taxed in the other party in accordance with this Agreement shall be deemed to arise from sources in that other party.

## **Article 9**

### **Mutual agreement procedure**

1. Where an individual considers that the actions of one or both of the parties result, or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those parties, present a case to the competent authority of the party of which he is a resident.
2. The competent authority shall endeavour, if the case referred to in paragraph 1 appears to it to be justified, and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other party. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the parties, except such limitations as apply for the purposes of giving effect to such an agreement.
3. The competent authorities of the parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the parties may communicate with each other directly for the purpose of reaching an agreement for the purpose of this Article.

## **Article 10**

### **Exchange of information**

1. The competent authorities of the parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement.
2. Any information received under paragraph 1 by a party shall be treated as secret in the same manner as information obtained under the domestic laws of that party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by this Agreement, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a party the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other party;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other party;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

## **Article 11**

### **Entry into force**

Each of the parties shall notify the other of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall, provided that Agreement between the Government of the United Kingdom and the Government of the Virgin Islands for the Exchange of Information Relating to Taxes signed on 29<sup>th</sup> October 2008 is in force, thereupon have effect:

- a) in the United Kingdom, for any year of assessment beginning on or after 6<sup>th</sup> April next following the date on which this Agreement enters into force;

- b) in the Virgin Islands, on or after 1<sup>st</sup> January next following the date on which this Agreement enters into force.

## **Article 12**

### **Termination**

1. This Agreement shall remain in force until terminated by one of the parties. The Governments of either party may on or before 30<sup>th</sup> June in any calendar year, give notice of termination to the Government of the other party and, in such event, this Agreement shall cease to have effect:
  - a) in the United Kingdom, for any year of assessment beginning on or after 6<sup>th</sup> April next following the date on which the notice is given;
  - b) in the Virgin Islands, for any year of assessment beginning on or after 1<sup>st</sup> January next following the date on which the notice is given.
2. If this Agreement is terminated the parties shall remain bound by the provisions of Article 10 (Exchange of information) with respect to any information obtained under the Agreement.

2.  
**AGREEMENT BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
AND THE GOVERNMENT OF AUSTRALIA FOR THE EXCHANGE OF  
INFORMATION RELATING TO TAXES**

**AGREEMENT BETWEEN**

**THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS**

**AND**

**THE GOVERNMENT OF AUSTRALIA**

**FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

**Whereas** the British Virgin Islands and Australia (“the Contracting Parties”) recognise that present legislation already provides a framework for mutual legal assistance and cooperation in the exchange of criminal information in tax matters;

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

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

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

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

**Therefore**, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

## **ARTICLE 1**

### **SCOPE OF AGREEMENT**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

## **ARTICLE 2**

### **JURISDICTION**

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

## **ARTICLE 3**

### **TAXES COVERED**

1. The taxes covered by this Agreement are:
  - (a) in the case of Australia, taxes of every kind and description imposed under federal laws administered by the Commissioner of Taxation; and
  - (b) in the case of the British Virgin Islands, such taxes as may from time to time, be imposed by law.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall



notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

3. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Contracting Party.

## **ARTICLE 4**

### **DEFINITIONS**

1. In this Agreement-

(a) “Australia”, when used in a geographical sense, excludes all external territories other than:

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory or Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including only the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone and the seabed and subsoil of the continental shelf;

(b) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;

(c) “belonger” means in respect of the British Virgin Islands a person who is deemed to belong to the Territory under section 2 (2) of the Virgin Islands Constitution Order 2007;

(d) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) “competent authority” means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and for the British Virgin Islands, the Financial Secretary or a person or authority designated by the Secretary in writing;
- (g) “Contracting Party” means Australia or the British Virgin Islands as the context requires;
- (h) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (i) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (j) “information” means any fact, statement, document or record in whatever form;
- (k) “information gathering measures” means judicial, regulatory or administrative procedures that enable a Requested Party to obtain and provide the information requested;
- (l) “information subject to legal privilege” means:
  - (i) communications between a professional legal advisor and a client made in connection with the giving of legal advice to the client;
  - (ii) communications between a professional legal advisor and a client or any person representing the client or between such an advisor or the 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
  - (iii) information enclosed with or referred to in such communications and made:
    - (A) in connection with the giving of legal advice; or
    - (B) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the information is in the possession of a person who is entitled to possession of it. Information held with the intention of furthering a

criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent a professional legal advisor from providing the name and address of a client where doing so would not constitute a breach of legal privilege;

- (m) “national” means
    - (i) in relation to Australia, any person who is an Australian citizen;
    - (ii) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands or is a permanent resident of the British Virgin Islands;
  - (n) “person” means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
  - (o) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - (p) “principal legal advisor” means an attorney or legal practitioner, solicitor or other admitted legal representative.
  - (q) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - (r) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - (s) “Requested Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
  - (t) “Requesting Party” means the party to this Agreement submitting a request for or having received information from the Requested Party;
  - (u) “tax” means any tax covered by this Agreement pursuant to Article 3.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under laws of that Contracting Party.

## **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 the information, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - b) information regarding the legal and beneficial ownership of companies, partnerships, trusts and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on all such persons in an ownership chain; in the case of trusts, information on settlers, trustees, beneficiaries and protectors. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement, in order to demonstrate the foreseeable relevance of the information to the request:
  - a) the identity of the person under examination or investigation;

- b) the period for which the information is requested;
  - c) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought, and the form in which the Requesting Party wishes to receive the information;
  - d) the tax purposes for which the information is sought;
  - e) 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 foreseeably relevant to the tax purpose of the request;
  - f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
  - g) a declaration that the request 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;
  - h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
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 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party and 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, following reasonable notice of not less than 14 days from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the 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, in accordance with its domestic laws, 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, in accordance with its domestic laws.

## **ARTICLE 7**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the Requested Party may decline to assist:
  - a) where the request is not made in conformity with this Agreement;
  - b) where the Requesting Party has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the Requested Party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information subject to legal privilege, or information that would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of fact alone constitute such a secret or process.
3. A request for information shall not be refused on the ground that the tax liability or claim giving rise to the requested information is disputed by the taxpayer.

4. The Requested Party shall not be required to obtain and provide information that the Requesting Party would be unable to obtain in similar circumstances:
  - a) under its own laws for the purpose of the enforcement or administration of its own tax laws; or
  - b) in response to a valid request from the Requested Party under this Agreement.
5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and may be disclosed only to persons or authorities (including courts and administrative bodies and, in the case of the British Virgin Islands, a select committee of the House of Assembly) 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. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the Requested Party.
3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

## **ARTICLE 9**

### **SAFEGUARDS**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

## **ARTICLE 10**

### **ADMINISTRATIVE COSTS**

Costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be borne in accordance with a Memorandum of Understanding to be determined by the competent authorities of the Contracting Parties.

## **ARTICLE 11**

### **NO REJUDICIAL OR RESTRICTIVE MEASURES**

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and operative.
2. A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2, the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

## **ARTICLE 12**

### **IMPLEMENTING LEGISLATION**

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

## **ARTICLE 13**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
  2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
  3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
1. The Contracting Parties may also agree in writing on other forms of dispute resolution.



## ARTICLE 14

### ENTRY INTO FORCE

1. The Government of Australia and the Government of the British Virgin Islands shall notify each other in writing through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect:

- (a) from the date of entry into force of this agreement with respect to criminal tax matters relating to taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date; and
- (b) from 1 January 2009 with respect to all other matters covered in Article 1 relating to taxable periods beginning on or after 1 January 2009, or where there is no taxable period, all charges to tax arising on or after 1 January 2009.

2. The provisions of this Agreement shall apply in their terms to information predating the coming into force of this Agreement.

## ARTICLE 15

### TERMINATION

- 1. This Agreement shall remain in force until terminated by either Contracting Party.
- 2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of the notice of termination by the other Contracting Party.
- 3. Notwithstanding any termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

Signed by the Contracting Parties at London this 27<sup>th</sup> day of October 2008

For the Government of  
British Virgin Islands

Honourable Ralph T. O'Neal  
Premier

For the Government of the  
Australia

Mr. John Cecil Dauth  
Australian High Commissioner

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
AND  
THE GOVERNMENT OF AUSTRALIA  
FOR  
THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO  
CERTAIN INCOME INDIVIDUALS**

The Government of the British Virgin Islands and the Government of Australia (“the Contracting Parties”):

Recognising that the two Governments have concluded an Agreement for the Exchange of Information Relating to Taxes; and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals;

Have agreed as follows:

## **ARTICLE 1**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

## **ARTICLE 2**

### **TAXES COVERED**

1. The existing taxes to which this Agreement shall apply are:
  - a) in Australia, the income tax imposed under the federal law of Australia  
(hereinafter referred to as “Australian tax”).
  - b) in the British Virgin Islands, such taxes on income or profits as imposed by law  
(hereinafter to as “British Virgin Islands tax”).
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.
3. This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting Party.

## **ARTICLE 3**

### **DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) The term “Australia”, when used in a geographical sense, excludes all external territories other than:
- i. the Territory of Norkfolk Island;
  - ii. the Territory of Christmas Islands;
  - iii. the Territory of Cocos (Keeling) Islands;
  - iv. the Territory of Ashmore and Cartier Islands;
  - v. the Territory of Heard Island and McDonald Islands; and
  - vi. the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including only the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone and the seabed and subsoil of the continental shelf;

- b) the term “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- c) the term “competent authority” means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing;
- d) the term “Contracting Party” means Australia or the British Virgin Islands, as the context requires;
- e) the term ”national” means
- i. in relation to Australia, any person who is an Australian citizen;
  - ii. in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands or is a permanent resident of the British Virgin Islands;
- f) the term “person”, wherever used, refers to an individual;

- g) the term “tax” means Australian tax or British Virgin Islands tax as the context requires.
2. As regards the application of this Agreement at any time by a Contracting party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

#### **ARTICLE 4**

#### **RESIDENT**

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
- a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
  - b) in case of the British Virgin Islands, a person who is liable to pay tax under British Virgin Islands law.
2. A person is not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.
3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting Parties, then the person’s status shall be determined as follows:
- a) the individual shall be deemed to be a resident only of the Contracting Party in which a permanent home is available to that individual; if a permanent home is available in both Contracting Parties, or in neither of them, that individual shall be deemed to be a resident only of the Contracting Party with which the individual’s personal and economic relations are closer (centre of vital interests);
  - b) if the Contracting Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Contracting Party of which the individual is a national;

- c) if the individual is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

## **ARTICLE 5**

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.  
  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Contracting Party and the individual is a resident of that Contracting Party who:
  - i. is a national of that Contracting Party; or
  - ii. did not become a resident of that Contracting Party solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Contracting Party.

## **ARTICLE 6**

### **STUDENTS**

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Contracting Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Contracting Party, provided such payments arise from sources outside that Contracting Party.

## **ARTICLE 7**

### **EXCHANGE OF INFORMATION**

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information Relating to Taxes concluded by the

Contracting parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

## **ARTICLE 8**

### **ENTRY INTO FORCE**

The Contracting Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information Relating to Taxes is in force between the Contracting Parties, thereupon have effect:

- a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters in force.

## **ARTICLE 9**

### **TERMINATION**

1. This Agreement shall continue in force indefinitely, but either of the Contracting Parties may, give to the other Contracting Party through the appropriate channel written notice of termination.
2. Such termination shall become effective:
  - a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
  - b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.
3. Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the Agreement for the Exchange of Information Relating to Taxes between the Contracting Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at London, this 27<sup>th</sup> day of October, 2008 in the English language.

FOR THE GOVERNMENT OF  
BRITISH VIRGIN ISLANDS

Honourable Ralph T. O'Neal  
Premier

FOR THE GOVERNMENT OF  
AUSTRALIA

Mr. John Cecil Dauth  
Australian High Commissioner



**3.  
AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE  
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE EXCHANGE OF  
INFORMATION RELATING TO TAXES**

**Agreement**

**Between**

**the Government of New Zealand**

**and**

**the Government of the British Virgin Islands**

**for the Exchange of Information Relating to Taxes**

**Whereas** New Zealand and the British Virgin Islands ("the Contracting Parties") recognise that present legislation already provides a framework for mutual legal assistance and cooperation in the exchange of information in criminal tax matters;

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

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

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

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

**Therefore,** the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

**Article 1**  
**Scope of Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

**Article 2**  
**Jurisdiction**

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested party:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

**Article 3**  
**Taxes Covered**

1. The taxes covered by this Agreement are:
  - (a) in the case of New Zealand, taxes of every kind and description;

- (b) in the case of the British Virgin Islands, such taxes as may from time to time, be imposed by law.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

3. This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Contracting Party.

#### **Article 4**

##### **Definitions**

1. In this Agreement –

- (a) "New Zealand" means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area which New Zealand may exercise sovereign rights with respect to natural resources;
- (b) "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (c) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can

be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) "competent authority" means in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner and for the British Virgin Islands, the Financial Secretary or a person or authority designated by the Secretary in writing;
- (f) "Contracting Party" means New Zealand or the British Virgin Islands as the context requires;
- (g) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (h) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (i) "information" means any fact, statement, document or record in whatever form;
- (j) "information gathering measures" means judicial, regulatory or administrative procedures that enable a Requested Party to obtain and provide the information requested;
- (k) "information subject to legal privilege" means:
  - (i) communications between a professional legal advisor and a client made in connection with the giving of legal advice to the client;

- (ii) communications between a professional legal advisor and a client or any person representing the client or between such an advisor or the 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
- (iii) information enclosed with or referred to in such communications and made:
  - (A) in connection with the giving of legal advice; or
  - (B) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

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

- (l) "national" means –
  - (i) in relation to New Zealand, any individual possessing the nationality or citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - (ii) in relation to the British Virgin Islands, any person who belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of

the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130);

- (m) "person" means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (n) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (o) "professional legal advisor" means an attorney or legal practitioner, solicitor or other admitted legal representative;
- (p) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (q) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (r) "Requested Party" means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (s) "Requesting Party" means the party to this Agreement submitting a request for or having received information from the Requested Party;
- (t) "tax" means any tax covered by this Agreement pursuant to Article 3.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at

that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **Article 5**

### **Exchange of Information upon Request**

1. The competent authority of a Requested 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 the information, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:



- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  
- (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement, in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
  
- (b) the period for which the information is requested;
  
- (c) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought, and the form in which the Requesting Party wishes to receive the information;
  
- (d) the tax purposes for which the information is sought;
  
- (e) 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 foreseeably relevant to the tax purpose of the request;

- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a declaration that the request 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;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party and 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, following reasonable notice of not less than 14 days from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the 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, in accordance with its domestic laws, 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, in accordance with its domestic laws.

## **Article 7**

### **Possibility of Declining a Request**

1. The competent authority of the Requested Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the Requesting Party has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty; or

- (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the Requested Party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information subject to legal privilege, or information that would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.
3. A request for information shall not be refused on the ground that the tax liability or claim giving rise to the request is disputed by the taxpayer.
4. The Requested Party shall not be required to obtain and provide information that the Requesting Party would be unable to obtain in similar circumstances:
- (a) under its own laws for the purpose of the enforcement or administration of its own tax laws; or
  - (b) in response to a valid request from the Requested Party under this Agreement.
5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

## **Article 8**

### **Confidentiality**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and may be disclosed only to persons or authorities (including courts and administrative bodies and, in the case of the British Virgin Islands, a select committee

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

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

### **Article 9**

#### **Safeguards**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

### **Article 10**

#### **Administrative Costs**

Costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be borne in accordance with a Memorandum of Understanding to be determined by the competent authorities of the Contracting Parties.

### **Article 11**

#### **No Prejudicial or Restrictive Measures**

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
2. A "prejudicial or restrictive measure based on harmful tax practices" is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2, the term "prejudicial or restrictive measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

## **Article 12**

### **Implementing Legislation**

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

## **Article 13**

### **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution.

#### **Article 14**

#### **Entry into Force**

The Government of New Zealand and the Government of the British Virgin Islands shall notify each other in writing through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and the provisions of this Agreement shall thereupon have effect from 1 January following entry into force.

#### **Article 15**

#### **Termination**

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing through the appropriate channel. 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 the notice of termination by the other Contracting Party.
3. Notwithstanding any termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

Signed by the Contracting Parties at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009 in the English language.

**For the Government of New Zealand:**

**For the Government of the British Virgin Islands:**

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**Name: Roy Ferguson**

**Position: Ambassador**

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**Name: Ralph T. O'Neal**

**Position: Honourable Premier**



**Agreement**  
**between**  
**the Government of New Zealand**  
**and**  
**the Government of the British Virgin Islands**  
**for the Allocation of Taxing Rights with Respect to Certain Income**  
**of Individuals**

The Government of New Zealand and the Government of the British Virgin Islands ("the Contracting Parties"):

Recognising that the Contracting Parties have concluded an Agreement for the Exchange of Information Relating to Taxes; and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals;

Have agreed as follows:

### **Article 1**

#### **Persons Covered**

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

### **Article 2**

#### **Taxes Covered**

1. The existing taxes to which this Agreement shall apply are:
  - (a) in New Zealand, the income tax, (hereinafter referred to as "New Zealand tax").
  - (b) in the British Virgin Islands, such taxes on income or profits as imposed by law, (hereinafter referred to as "British Virgin Islands tax").
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a

reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3. This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Contracting Party.

### **Article 3**

#### **Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "New Zealand" means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
  - (b) the term "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
  - (c) the term "competent authority" means in the case of New Zealand the Commissioner of Inland Revenue or an authorised representative of the Commissioner and, in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing;
  - (d) the term "Contracting Party" means New Zealand or the British Virgin Islands, as the context requires;
  - (e) the term "national" means:
    - (i) in relation to New Zealand, any person who is a New Zealand citizen;

- (ii) in relation to the British Virgin Islands, any person who belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Virgin Islands;
- (f) the term "person", wherever used, refers to an individual;
- (g) the term "tax" means New Zealand tax or British Virgin Islands tax as the context requires.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

#### **Article 4**

##### **Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:
  - (a) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax; and
  - (b) in the case of the British Virgin Islands, a person who is liable to pay tax under British Virgin Islands law.

2. A person is not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting Parties, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Contracting Party in which a permanent home is available to that individual; if a permanent home is available in both Contracting Parties, or in neither of them, that individual shall be deemed to be a resident only of the Contracting Party with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Contracting Party of which the individual is a national;
- (c) if the individual is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

## **Article 5**

### **Government Service**

1. (a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting Party to an individual in respect of services rendered to that Government shall be taxable only in that State.

(b) However, such payments shall be taxable only in the other Contracting Party if the services are rendered in that Contracting Party and the individual is a resident of that Contracting Party who:

- (i) is a national of that Contracting Party; or
- (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1, payments in respect of services rendered in connection with a business carried on by the Government of a Contracting Party may be taxed in accordance with the laws of a Contracting Party.

## **Article 6**

### **Students**

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Contracting Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Contracting Party, provided such payments arise from sources outside that Contracting Party.

## **Article 7**

### **Exchange of Information**

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the *Agreement between the Government of the British Virgin Islands and the Government of New Zealand on the Exchange of Information Relating to Taxes* (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

**Article 8**  
**Entry into Force**

The Contracting Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided the *Agreement between the Government of the British Virgin Islands and the Government of New Zealand for the Exchange of Information Relating to Taxes* is in force between the Contracting Parties, thereupon have effect:

- (a) in respect of New Zealand tax, for any income year beginning on or after 1 April in the calendar year following the date on which this Agreement enters into force; and
- (b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year following the date on which this Agreement enters into force.

**Article 9**  
**Termination**

1. This Agreement shall continue in force indefinitely, but either of the Contracting Parties may, give to the other Contracting Party through the appropriate channel written notice of termination

2. Such termination shall become effective:

- (a) in respect of New Zealand tax, in the income year beginning on or after 1 April in the calendar year following that in which the notice of termination is given;

- (b) in respect of British Virgin Islands tax, for any income year beginning on or after 1 January in the calendar year following that in which the notice of termination is given.

3. Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the *Agreement between the Government of the British Virgin Islands and the Government of the New Zealand for the Exchange of Information Relating to Taxes*, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at \_\_\_\_\_, this xx day of xx 2009 in the English language.

**For the Government of New**

**For the Government of the British**

**Zealand:**

**Virgin Islands:**

\_\_\_\_\_  
**Name: Roy Ferguson**

**Position: Ambassador**

\_\_\_\_\_  
**Name: Ralph T. O'Neal**

**Position: Honourable Premier**



**4.**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN  
AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE  
EXCHANGE OF INFORMATION RELATING TO TAXES**

**AGREEMENT BETWEEN  
THE GOVERNMENT OF THE KINGDOM OF SWEDEN  
AND  
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
THE FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE  
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

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

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

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

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

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

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

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

**ARTICLE 1**

**SCOPE OF AGREEMENT**

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

Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

2. This Agreement shall not affect the application in the respective Contracting Parties of the rules on mutual legal assistance in criminal matters.

## **Article 2**

### **Jurisdiction**

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

## **Article 3**

### **Taxes Covered**

1. The taxes covered by this Agreement are:

- (a) in the case of the British Virgin Islands,

- (i) the income tax;
- (ii) the payroll tax; and
- (iii) the property tax

- (b) in the case of Sweden,

- (i) the national income tax (den statliga inkomstskatten);
- (ii) the withholding tax on dividends (kuponngskatten)
- (iii) the income tax on non-resident (den sarskilda inkomstskatten for utomlands bosatta);

- (iv) the income tax on non-residents artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta atister m.fl.);
- (v) the municipal income tax (den kommunala inkomstskatten);
- (vi) the yield tax on pension funds (avkastningsskatten pa pensionsmedel);
- (vii) the value added tax (mervardesskatten);
- (viii) the tax on advertisements and advertising (skatten pa annonser och reklam);
- (ix) the premium tax on group life insurance etc. (den sarskilda premieskatten for grupplivforsakring, m.m.);
- (x) the lottery tax (lotteriskatten);
- (xi) the tobacco excise duty (tobaksskatten);
- (xii) the alcohol excise duty (alkoholskatten);
- (xiii) the premium tax on insurance against civil liability in respect of the use of motor vehicles (skatten pa traikforsakringspremir m.m.); and
- (xiv) the energy tax (skatten pa energy).

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

## **Article 4**

### **Definitions**

1. In this Agreement unless the context otherwise requires-
  - (a) "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
  - (b) "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;

- (c) “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means
  - (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
  - (ii) in the case of Sweden, the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Agreement;
- (f) “Contracting Party” means the British Virgin Islands or Sweden as the context requires;
- (g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other laws;
- (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a Requested party to obtain and provide the requested information;
- (k) “national” means –
  - (i) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;
  - (ii) in relation to Sweden any individual possessing the nationality of Sweden, and any legal person, partnership or association deriving its status as such from the laws in force in Sweden;
- (l) “person” includes an individual, a company, or any other body or group of persons;

- (m) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - (n) “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
  - (o) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - (p) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - (q) “Requested Party” means the Contracting Party to this Agreement which is requested to provide or has provided information in response to a request;
  - (r) "Requesting Party" means the Contracting Party to this Agreement submitting a request for or having received information from the Requested Party;
  - (s) "tax" means any tax covered by this Agreement.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **Article 5**

### **Exchange Of Information Upon Request**

1. The competent authority of 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, in accordance with the terms provided in paragraph 7 (a), advise the competent authority of the Requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.
2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall

use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trust nor foundations.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- a) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
- b) information relating to a period more than six years prior to the tax period under consideration;
- c) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;

- c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive the information;
  - d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Party;
  - e) grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested Party;
  - f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
  - g) a declaration that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information were within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice;
  - h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response:
- a) the competent authority of the Requested party shall confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request; and
  - b) if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, or for its refusal.

**Article 6**  
**Tax examinations or investigations abroad**



1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the 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, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.
3. If the request referred to in paragraph 2 of this Article is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

## **Article 7**

### **Possibility of declining a request**

1. The competent authority of the Requested Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement; or
  - (b) where the Requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or
  - (c) where the disclosure of the information requested would be contrary to the public policy (ordre public).
2. The provisions of this Agreement shall not impose upon a party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.
3. a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential

communications between a client and a attorney, solicitor or barrister where such communications are:

- (i) produced for the purposes of seeking or providing legal advice, or
    - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
  - c) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
  5. The Requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the Requesting Party, the competent authority of the Requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
  6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a resident or national of the Requested Party as compared with a resident or national of the Requesting Party in the same circumstances.

## **Article 8**

### **Confidentiality**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
2. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the Requested Party.
3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

## **Article 9**

## **Safeguards**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. However, these rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

## **Article 10**

### **Administrative costs**

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the Requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the Requesting Party. Extraordinary costs include, but are not limited to, the following:
  - (a) reasonable fees charged by third parties for carrying out research;
  - (b) reasonable fees charged by third parties for copying documents;
  - (c) reasonable costs of engaging experts, interpreters, or translators;
  - (d) reasonable costs of conveying documents to the Requesting Party;
  - (e) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
  - (f) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the Requesting Party will continue to pursue the request and bear the cost.

## **Article 11**

### **No prejudicial or restrictive measures**

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

measures, both Contracting Party shall immediately initiate proceedings to resolve the matter.

2. A prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Contracting party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of the term “prejudicial or restrictive measure”, the term includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures include any measure which relates, directly or indirectly, to taxation matters. However, they do not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

## **Article 12**

### **Implementing legislation**

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

## **Article 13**

### **Language**

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

## **Article 14**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. In addition to the efforts referred to in paragraph 1 of this Article, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching agreement under this Article.

## **Article 15**

### **Entry into force**

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth date after the receipt of the later of these notifications and shall thereupon have effect:
  - (a) for criminal tax matters, from the date of entry into force; and
  - (b) for all other matters covered in Article 1, on taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

## **Article 16**

### **Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party.
2. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination to the Contracting Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Contracting Party.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

In witness whereof the undersigned being duly authorised in that behalf by the respective parties, have signed this Agreement.

Done at Copenhagen this 18<sup>th</sup> day of May 2009, in duplicate in the English language

For the Government of the  
the Kingdom of Sweden

For the Government of  
the British Virgin Islands

Mr. Lars Grundberg  
Ambassador Extraordinary

Honourable Dancia Penn  
Deputy Premier

## **AGREEMENT**

### **BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION ON INDIVIDUALS**

The Government of the Kingdom of Sweden and the Government of the British Virgin Islands, desiring to conclude an Agreement for the avoidance of double taxation on individuals with respect to taxes on income, have agreed as follows:

#### **Article 1**

##### **Individuals covered**

This Agreement shall apply to individuals who are residents of one or both of the Parties.

#### **Article 2**

##### **Taxes covered**

1. The existing taxes to which the Agreement shall apply are:
  - a) in the case of the British Virgin Islands, the income tax (hereinafter referred to as “British Virgin Islands tax”);
  - b) in the case of Sweden:
    - (i) the national income tax (den statliga inkomstskatten);
    - (ii) the income tax on non-residents (den sarskilda inkomstskatten for utomlands bosatta);
    - (iii) the income tax on non-resident artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta artister m.fl.);
    - (iv) the municipal income tax (den kommunala inkomstskatten);  
(hereinafter referred to as “Swedish tax”).
2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other of any significant changes that have been made in their taxation laws concerning individuals.

### **Article 3**

#### **General definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term “a Party” means the British Virgin Islands or Sweden, as the context requires; the term “Parties” means the British Virgin Islands and Sweden;
  - b) the term “the British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
  - c) the term “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction
  - d) the term “competent authority” means:
    - (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
    - (ii) in Sweden, the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purpose of this Agreement;
  - e) the term “enterprise” applies to the carrying on of any business;
  - f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Party, except when the ship or aircraft is operated solely between places in the other Party.
  
2. As regards the application of the Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

### **Article 4**

#### **Resident**

1. For the purposes of this Agreement, the term “resident of a Party” means:
  - a) in Sweden in respect of an individual, any individual who, under the laws of Sweden, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature. This term, however, does not include an individual who is liable to tax in Sweden in respect only of income from sources in Sweden;

- b) in the British Virgin Islands in respect of an individual who, under the laws of the British Virgin Islands is ordinarily resident.
2. Where by reason of the provisions of paragraph 1 an individual is a resident in both Parties, then his status shall be determined as follows:
- a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
  - b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
  - c) if he has a habitual abode in both Parties or in neither of them, the competent authorities of the Parties shall settle the question by mutual agreement.

## **Article 5**

### **Income from employment**

1. Subject to the provisions of Articles 6, 7, 8 and 9, salaries, wages and other similar remuneration derived by a resident of a Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Party in respect of an employment exercised in the other Party shall be taxable only in the first-mentioned Party if:
  - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and
  - (c) the remuneration is not borne by a fixed place of business through which the business is wholly or partly carried on which the employer has in the other Party.



3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Party, may be taxed in that Party.

## **Article 6**

### **Directors' fees**

Directors' fees and other similar payments derived by a resident of a Party in his capacity as a member of the board of directors of a company which is resident of the other Party may be taxed in that other Party.

## **Article 7**

### **Artistes and sportsmen**

1. Income derived by a resident of a Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Party, may be taxed in that other Party.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another individual or legal entity, that income may be taxed in the Party in which the activities of the entertainer or sportsman are exercised.

## **Article 8**

### **Pensions**

1. Pensions and other similar remuneration, disbursements under the Social Security legislation and annuities arising in a Party and paid to a resident of the other Party may be taxed in the first-mentioned Party.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## **Article 9**

### **Government service**

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Party or a political subdivision or a statutory body or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or body or authority shall be taxable only in that Party.

- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who did not become a resident of that Party solely for the purpose of rendering the services.
2. The provisions of Articles 5, 6 and 7 shall apply to salaries, wages, and other similar remuneration in respect of services rendered in connection with a business carried on by a Party or a political subdivision or a statutory body or a local authority thereof.

## **Article 10**

### **Students**

Payments which a student or business apprentice who is or was immediately before visiting a Party a resident of the other Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

## **Article 11**

### **Elimination of double taxation**

1. In the British Virgin Islands double taxation shall be avoided in accordance with the laws of the British Virgin Islands;
2. In Sweden double taxation shall be avoided as follows:
  - a) Where a resident of Sweden derives income which under the laws of the British Virgin Islands and in accordance with the provisions of this Agreement may be taxed in the British Virgin Islands, Sweden shall – subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) - as a deduction from the tax on such income, an amount to the British Virgin Islands tax paid in respect of such income;
  - b) Where in resident of Sweden derives income which, in accordance with the provision of this Agreement, shall be taxable only in the British Virgin Islands, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in the British Virgin Islands.

## **Article 12**

### **Mutual agreement procedure**

1. Where an individual considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.
3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.
4. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

### **Article 13**

#### **Entry into force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have:
  - (a) in the British Virgin Islands:

in respect of British Virgin Islands tax, on taxes chargeable for any calendar year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force;
  - (b) in Sweden:
    - i. in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Agreement enters into force;
    - ii. in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the date on which the Agreement enters into force.

3. Notwithstanding paragraph 2, this Agreement shall only have effect when the Agreement signed on 18th of May 2009 between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to taxes shall have effect.

## **Article 14**

### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Agreement shall cease to have effect
  - i. in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the end of the six month period;
  - ii. in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the end of the six month period.
2. Notwithstanding paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 18th of May 2009 between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to taxes.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

Done at Copenhagen this 18th day of May 2009, in duplicate in the English language.

For the Government of  
The Kingdom of Sweden:

Mr. Lars Grundberg  
Ambassador Extraordinary

For the Government of  
The British Virgin Islands

Honourable Dancia Penn  
Deputy Premier

**AGREEMENT BETWEEN THE KINGDOM OF SWEDEN AND THE GOVERNMENT  
OF THE BRITISH VIRGIN ISLANDS ON THE ACCESS TO MUTUAL AGREEMENT  
PROCEDURES IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF  
ASSOCIATED ENTERPRISES**

The Government of Kingdom of Sweden and Government of the British Virgin Islands, desiring to conclude an agreement on the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises, have agreed as follows:

**Article 1**

**Taxes covered**

The taxes to which this Agreement shall apply are:

- a) in the British Virgin Islands: income tax (hereinafter referred to as “the British virgin Islands tax”);
- b) in Sweden:
  - (i) the national income tax (den statliga inkomstskatten); and
  - (ii) the municipal income tax (den kommunala inkomstskatten);(hereinafter referred to as “Swedish tax”).

**Article 2**

**DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) the term “Party” means the British Virgin Islands or Sweden as the context requires; the term “Parties” means the British Virgin Islands and Sweden;
- b) the term “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- c) the term “the British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- d) the term “resident of a Party” means
  - (i) in Sweden, any person, who under the law of Sweden is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature; this term, however, does not include a person who is liable to tax in Sweden in respect only of income from sources in Sweden;

- (ii) in the British Virgin Islands, an individual ordinarily resident in the British Virgin Islands, and a company, partnership or other entity created under the laws of the British Virgin Islands; provided that an entity created under the laws of the British Virgin Islands shall not be deemed to be resident in the British Virgin Islands unless its effective management is carried on in the British Virgin Islands;
- e) the term “enterprise” applies to the carrying on of any business;
- f) the term “enterprise of a Party” mean an enterprise carried on by a resident of a Party;
- h) the term “competent authority” means
- (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
  - (ii) in the case of Sweden, the Minister of Finance, or authorised representative or the authority which is designated as a competent authority for the purposes of this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

### **Article 3**

#### **PRINCIPLES APPLYING TO THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES**

Where:

- (a) an enterprise of a Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## **Article 4**

### **MUTUAL AGREEMENT PROCEDURES**

1. Where an enterprise considers that, in any case to which this Agreement applies, the principles set out in Article 3 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Party concerned, present its case to the competent authority of the Party of which it is a resident. The case must be presented within three years of the first notification of the action which is contrary or is likely to be contrary to the principles set out in Article 3. The competent authority shall then without delay notify the competent authority of the other Party.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.
3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.
4. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **Article 5**

### **ENTRY INTO FORCE**

1. Each of the parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the later of these notifications and shall thereupon have effect
  - i. in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Agreement enters into force;
  - ii. in respect of other taxes of income, on taxes chargeable for any tax year beginning on or after the first day January of the year next following the date on which the Agreement enters into force.

3. Notwithstanding paragraph 2, this Agreement shall only have effect when the Agreement signed on 18th May 2009 between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to tax matters shall have effect.

## Article 6

### TERMINATION

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Agreement shall cease to have effect

- i. in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the end of the six month period;
- ii. in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the end of the six month period.

2. Notwithstanding paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 18th May 2009 between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to tax matters.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

Done at Copenhagen this 18th day of May 2009, in duplicate in the English language.

For the Government of  
the Kingdom Of Sweden

Mr. Lars Grundberg  
Ambassador Extraordinary

For the Government  
of the British Virgin Islands

Honourable Dancia Penn  
Deputy Premier

Made by the Minister this 15<sup>th</sup> day of March, 2010.

(Sgd.) Ralph T O'Neal,  
Minister for Finance.