

## **AGREEMENT**

### **BETWEEN THE PORTUGUESE REPUBLIC AND THE STATES OF GUERNSEY FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

Whereas the Portuguese Republic and the States of Guernsey (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

Whereas it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this agreement terminate a tax information exchange agreement with the Portuguese Republic;

Whereas the States of Guernsey on the 21st February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

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

The Parties have agreed to conclude the following agreement which contains obligations on the part of the Parties only:

#### **Article 1 Scope of the Agreement**

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

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the requesting Party concerning taxes covered by this Agreement;
- b) Include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters; and
- c) Be treated as confidential as set forth in this Agreement.

## Article 2 Jurisdiction

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

## Article 3 Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:
  - a) In the case of Portugal:
    - i. Personal income tax (imposto sobre o rendimento das pessoas singulares – IRS);
    - ii. Corporate income tax (imposto sobre o rendimento das pessoas colectivas – IRC);
    - iii. Local surtax on corporate income tax (Derrama);
    - iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas);
  - b) In the case of Guernsey:
    - i. Income tax;
    - ii. Dwellings profits tax.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall apply also to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

## Article 4 Definitions

1. In this Agreement:
  - a) The term “Portugal” when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the international law and the Portuguese legislation, including its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, comprising the seabed and subsoil thereof, over which the Portuguese Republic exercises sovereign rights or jurisdiction;
  - b) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;

- 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 Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative; and in the case of Guernsey, the Director of Income Tax or his delegate;
- f) “Criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- g) “Criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- h) “Information gathering measures” means laws and administrative or judicial procedures enabling the requested Party to obtain and provide the information requested;
- i) “Information” means any fact, statement, document or record in whatever form;
- j) “Person” means a natural person, a company or any other body or group of persons;
- k) “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;
- l) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “Recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

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

## Article 5 Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its 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 specified in Article 1 and subject to Article 2 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; and
- b) Information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of

foundations, information on founders, members of the foundation council and beneficiaries,

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) The identity of the person under examination or investigation;
- b) The period for which the information is requested;
- c) The nature of the information sought and the form in which the requesting Party would prefer to receive it;
- d) The tax purpose for which the information is sought;
- e) The reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) Grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party,
- g) To the extent known, the name and address of any person believed to be in possession of the requested information;
- h) A statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) A statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

Article 6  
Tax Investigations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party, to the extent permitted under its domestic laws.

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

Article 7  
Possibility of Declining a Request

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

4. 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.

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 or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

#### Article 8 Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.

6. The Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and shall comply with the guidelines established by the United Nations General Assembly Resolution 45/95, adopted on 14<sup>th</sup> December 1990.

#### Article 9 Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the

competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

#### Article 10 Implementation legislation

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

#### Article 11 Language

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

#### Article 12 Mutual Assistance and Agreement Procedures

1. If the competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.
2. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
3. In addition to the agreements referred to in paragraph 1 and 2, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.
5. Formal communications, including requests for information, made in connection with or pursuant to the provisions of this Agreement will be in writing directly to the competent authority of the other Party at such address as may be notified by one Party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the aforementioned competent authorities or their authorised representatives.

#### Article 13 Entry into force

1. This Agreement shall enter into force thirty days from the date on which the Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. Upon the date of entry into force, this Agreement shall have effect:

- a) For criminal tax matters on that date; and
- b) For all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 14  
Duration and Termination

- 1. This Agreement shall remain in force for an unlimited period of time.
- 2. Either Party may, at any time, terminate the Agreement by serving a notice of termination in writing.
- 3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
- 4. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

Done at London, on the 9<sup>th</sup> 2010, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR

FOR

THE PORTUGUESE REPUBLIC:

THE STATES OF GUERNSEY:

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