

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

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

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

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

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

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

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

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

ARTICLE 1

SCOPE OF AGREEMENT

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

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

ARTICLE 2

JURISDICTION

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

ARTICLE 3

TAXES COVERED

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

- b) In the case of the British Virgin Islands,
 - i. The income tax;
 - ii. The payroll tax; and
 - iii. The property tax.

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

ARTICLE 4

DEFINITIONS

- 1. For the purposes of this Agreement, unless otherwise defined:
 - a) The term “Portugal” when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the International Law and the Portuguese legislation;
 - b) The term “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
 - c) “Competent authority” means:
 - (i) In respect of Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
 - (ii) In respect of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - d) “Person” includes an individual, a company and any other body of persons,
 - e) “National” means
 - i) In relation to Portugal any individual possessing the nationality or citizenship of that State; and any legal person, partnership or association deriving its status as such from the laws in force in that State;
 - ii) In relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007

(Statutory Instrument 2007 No.1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands.

- f) “Company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
- g) “Publicly-traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors,
- h) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
- i) “Recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties,
- j) “Collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors,
- k) “Tax” means any tax to which the Agreement applies,
- l) “Requesting Party” means the Party requesting information,
- m) “Requested Party” means the Party requested to provide information,
- n) “Information-gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information,
- o) “Information” means any fact, statement, document or record in any form whatever,

- p) “Tax matters” means all tax matters including criminal tax matters,
- q) “Criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the Requesting Party,
- r) “Criminal laws” means all criminal laws designated as such under the respective law of the Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

2. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request by the Requesting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the Requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Party if it had occurred in the territory of the Requested Party. The competent authority of the Requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authorities, in accordance with the terms of this Agreement have the authority to obtain and provide upon request:

a) Information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and

b) Information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries,

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

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

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

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

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

ARTICLE 6

TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

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

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

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

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

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

2. This Agreement shall not impose upon a Requested Party any obligation:
 - a) To provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or
 - b) To carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Party under paragraph 4 of Article 5.

3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - a) Produced for the purposes of seeking or providing legal advice or
 - b) Produced for the purposes of use in existing or contemplated legal proceedings.

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

5. The Requested Party shall not be required to obtain and provide information which the Requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the Requested Party under this Agreement.

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

ARTICLE 8

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the Requested Party.
4. The information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.
5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.

ARTICLE 9

SAFEGUARDS

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

ARTICLE 10

COSTS

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the Requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 11

NO PREJUDICIAL OR RESTRICTIVE MEASURES

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

ARTICLE 12

IMPLEMENTING LEGISLATION

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

ARTICLE 13

LANGUAGE

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

ARTICLE 14

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Agreement.
4. The Parties shall agree on procedures for dispute resolution should this become necessary.

ARTICLE 15

ENTRY INTO FORCE

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

2. Upon the date of entry into force, this Agreement shall have effect:

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

ARTICLE 16

DURATION AND TERMINATION

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

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

Done at London, on the 5th day of October of 2010, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR THE
PORTUGUESE REPUBLIC:

FOR THE
GOVERNMENT OF THE
BRITISH VIRGIN ISLANDS:

SÉRGIO TAVARES VASQUES
Secretary of State of the Fiscal Affairs

DANCIA PENN
Deputy Premier