

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE CAYMAN ISLANDS (AS AUTHORISED BY LETTER OF ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND) CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS

The Portuguese Republic and the Government of the Cayman Islands, hereinafter referred to as “Parties”,

Desiring to facilitate the Exchange of Information with respect to taxes,

Have agreed as follows:

Article 1

Scope of the agreement

1. 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 Parties 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.
2. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2
Jurisdiction

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

Article 3
Taxes covered

1. This Agreement shall apply to the following taxes imposed by the Parties
 - a) In 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); and
 - b) In the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Portugal to which this agreement applies.

2. This Agreement shall also apply to any identical or any substantially similar taxes 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 substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4
Definitions

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

- a) The term “Party” means Portugal or the Cayman Islands as the context requires;
- b) The term “Portugal” means territory of the Portuguese Republic situated in the European continent, the archipelagos of Azores and Madeira, the territorial sea and inland waters thereof as well as the continental shelf and any other area wherein the Portuguese State exercises sovereign rights or jurisdiction in accordance with the rules of international law and the laws of the Portuguese Republic;
- c) The term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
- d) The term “competent authority” means:
 - (i) In Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
 - (ii) In the Cayman Islands, the Tax Information Authority or a person or authority designated by it.
- e) The term “person” includes an individual, a company and any other body of persons;
- f) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) The term “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) The term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) The term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- j) The term “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) The term “tax” means any tax to which the Agreement applies;

- l) The term “applicant Party” means the Party requesting information;
- m) The term “requested Party” means the Party requested to provide information;
- n) The term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- o) The term “information” means any fact, statement or record in any form whatever;
- p) The term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) The term “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.

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 the requested Party shall provide upon request 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 such conduct occurred in the requested Party.

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 all relevant information gathering measures to provide the applicant 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 an applicant 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 for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

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

- b) Information regarding the ownership of companies, partnerships, trusts, foundations, 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 and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, 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. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) The identity of the person under examination or investigation;
- b) A statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) The tax purpose for which the information is sought;
- d) Grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- e) To the extent known, the name and address of any person believed to be in possession of the requested information;
- f) A statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) A statement that the applicant 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 applicant 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 applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the in-

formation, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

1. A Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

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. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant 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. 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 law of the requested 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 the 14th December 1990.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the Parties.

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 or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

Article 12

Mutual agreement procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective 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 purposes of reaching agreement under this Article.

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

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

Done at ____, on the _____ 2010, in duplicate in the Portuguese and English languages, both texts being equally authentic.

For the Portuguese Republic:

For the Government of
the Cayman Islands: