

**AGREEMENT**

**BETWEEN**

**THE COMMONWEALTH OF DOMINICA**

**AND**

**THE PORTUGUESE REPUBLIC**

**ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

**AND TAX MATTERS**

**Whereas** the Commonwealth of Dominica and the Portuguese Republic (“the Parties”) recognise the need for cooperation and the exchange of information with respect to taxes and tax matters;

**Whereas** the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes and tax matters;

**NOW**, therefore, the Parties desiring to conclude an Agreement to facilitate the exchange of information with respect to taxes and tax matters have agreed as follows:

## **ARTICLE 1**

### **SCOPE OF AGREEMENT**

1. The Parties, through their competent authorities, 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 and tax matters 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**

1. To enable this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is in possession or control of, a resident or national of a Party.

2. A Requested Party is not obliged 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 respect 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 respect of the Commonwealth of Dominica taxes of every kind and description, including customs duties, imposed by the laws of the Commonwealth of Dominica at the date of signature of this Agreement.

2. This 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 if the Parties so agree. 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. In 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 “Commonwealth of Dominica” means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights,
- c) The term “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 Commonwealth of Dominica, the Minister for Finance or the Minister’s authorized representative,
- d) The term “person” includes a natural person, a legal person, and any other body or group of such persons,
- e) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
- f) The term “publicly traded company” means any company whose principal class of shares is listed on a recognized 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 restricted to a limited group of investors,
- g) 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,
- h) The term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties,
- i) “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,

- j) The term “tax” means any tax covered by this Agreement,
- k) The term “Requested Party” means the Party requested to provide information,
- l) The term “Requesting Party” means the Party requesting information,
- m) The term “information gathering measures” means laws, regulations and administrative or judicial procedures enabling a Party to obtain and provide the requested information,
- n) The term “information” means any fact, statement, document or record in any form whatever,
- o) “Tax matters” means all tax matters including criminal tax matters,
- p) The term “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,
- q) “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 competent authority of 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 such conduct had occurred in the territorial jurisdiction 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, at its own discretion, all applicable 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, for the purposes specified in Article 1 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;
  - b) Information regarding the legal and beneficial 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;
    - i. In the case of trusts, information on settlors, trustees, protectors, and beneficiaries;
    - ii. In the case of foundations, information on founders, members of the foundation council and beneficiaries;

- iii. In the case of entities that are neither trusts nor foundations, equivalent information to the information in subparagraphs (i) and (ii) of this paragraph.
5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the 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 which exceeds a legally required time period for retaining that information in the jurisdiction of the Requested Party and where that information is in fact no longer kept;
  - c) Information that the Requested Party was not required to maintain prior to the effective date of this Agreement and is not available at the time of the request.
6. 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 laws of the Requesting Party with respect to the person identified as per subparagraph (a) of this paragraph;
  - f) Grounds for believing that the information requested is held or is in the possession or control of a person within the territorial jurisdiction of the Requested Party;
  - g) To the extent known, the name and address of any person believed to be in possession or control of the information requested;

- h) A statement 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 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;
  - 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.
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 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.
8. 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 the reasons for its refusal to provide the requested information.

## **ARTICLE 6**

### **TAX EXAMINATIONS OR INVESTIGATIONS ABROAD**

1. The competent authority of the Requesting Party may request that the competent authority of the Requested Party allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview persons and examine records with the prior consent of the persons concerned. The Requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the Requesting Party allow such tax examinations. 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 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 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 authorized 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 a request for information where:
  - a) The request is not made in conformity with this Agreement; or
  - b) 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) The disclosure of the information requested would be contrary to the public policy of the Requested Party.
2. This Agreement shall not impose upon a requested Party any obligation:
  - a) To provide information which would disclose 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. 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 representatives 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.
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 under examination or investigation.
5. The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws or in the normal course of administrative practice in response to a valid request made in similar circumstances 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 citizen or national of the Requested Party as compared with a citizen or national of the Requesting Party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY AND DATA PROTECTION**

1. All information received by a Party under this Agreement shall be kept confidential.
2. Such information may be disclosed only to persons and authorities (including judicial and administrative authorities) in the jurisdiction of the Party concerned with the purposes specified in Article 1 of this Agreement and shall only be used by such persons or authorities for such purposes. For such purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Information provided to a Requesting Party under this Agreement shall not be disclosed to any other person or entity or authority or any other jurisdiction.

4. 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 Requested Party.
5. In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199 of the Economic Partnership Agreement of 15 October, 2008 between the Cariforum States and the European Community and its Member States shall be applied accordingly.

## **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 responses thereto shall be drawn up in English.

## **ARTICLE 12**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreement referred to in Paragraph 1 of this Article, the competent authorities of the Parties may mutually agree the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Article.
4. The Parties may also determine to use other forms of dispute resolution should this become necessary.

## **ARTICLE 13**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force on the date of the receipt of the later of the notifications, in writing through diplomatic channels, conveying the completion of the internal procedures of each Party required for that purpose.
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**

### **AMENDMENT**

1. This agreement may be amended at the request of either Party.
2. Amendments shall enter into force in accordance with Article 13 of this Agreement.

## **ARTICLE 15**

### **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 by giving written notice of termination to the other Party.
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, duly authorized thereto by the respective Parties, have signed this Agreement.

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

**FOR THE  
COMMONWEALTH OF DOMINICA:**

**FOR THE  
PORTUGUESE REPUBLIC:**

Janet Charles  
Acting High Commissioner

Sérgio Tavares Vasques  
Secretary of State of the Fiscal Affairs