

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND JERSEY FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

WHEREAS the Portuguese Republic and the Government of Jersey (the Parties) wish to enhance and facilitate the terms and conditions governing the exchange of information related to taxes;

WHEREAS it is acknowledged that the Government of Jersey has the right under the terms of its entrustment from the UK to negotiate, conclude, perform and subject to the terms of this Agreement, terminate a tax information exchange agreement with the Portuguese Republic;

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 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 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 in the control 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 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);
 - v) Value added tax (Imposto sobre o valor acrescentado).
 - b) In case of Jersey:
 - i) The income tax;
 - ii) The goods and services 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) “Jersey” means the Bailiwick of Jersey, including the territorial sea;
 - c) “Company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - d) “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 Jersey the Treasury and Resources Minister or his authorised representative;
 - e) “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;
 - f) “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;
 - g) “Information gathering measures” means laws and administrative or judicial procedures enabling the requested Party to obtain and provide the information requested;

- h) “Information” means any fact, statement, document or record in whatever form;
- i) “Person” means a natural person, a company or any other body or group of persons;
- j) “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;
- k) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- l) “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;
- 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 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 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 applicable information gathering measures necessary to provide the re-

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 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,
- b) Information regarding the legal and beneficial ownership of companies, partnerships and other persons and, within the constraints of Article 2, any other persons in an ownership chain, including
 - i) In the case of collective investment funds and schemes, information on shares, units and other interests;
 - ii) In the case of trusts, information on settlors, trustees protectors and beneficiaries; and
 - iii) 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 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 in the control 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 or in the control of or able to obtain the requested information,
- h) A statement that the request conforms with the laws and administrative practice of the requesting Party and that the information would be obtainable by the requesting Party under its laws or in the normal course of administrative practice in re-

sponse to a valid request made in similar circumstances from the requested Party under 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.
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 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. 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 (ordre public).
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, infor-

mation 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. 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 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 Party 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

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 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 use their best efforts 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, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on procedures for dispute resolution should this become necessary.

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

TERMINATION AND DURATION

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 being duly authorised in that behalf by the respective Party, have signed the Agreement.

DONE in duplicate at London this 9th day of July, 2010 in the Portuguese and English languages, all texts being equally authoritative.

FOR
THE PORTUGUESE REPUBLIC:

FOR
THE GOVERNMENT OF JERSEY
