

Agreement

between

The Government of the Federal Republic of Germany

and

The Government of the British Virgin Islands

on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of the Federal Republic of Germany
and
The Government of the British Virgin Islands

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

Whereas the Contracting 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 Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Whereas the Federal Republic of Germany is a Member of the OECD;

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

Whereas the Contracting Parties recognise that the following Agreement contains obligations on the part of the Contracting Parties only;

Have agreed as follows:

ARTICLE 1

SCOPE OF AGREEMENT

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including 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. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2

JURISDICTION

A Requested Contracting 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. The taxes covered by this Agreement are:

(a) in the case of the Federal Republic of Germany

- the income tax (Einkommensteuer);
- the corporation tax (Körperschaftsteuer);
- the trade tax (Gewerbesteuer);
- the capital tax (Vermögensteuer);
- the inheritance tax (Erbschaftsteuer);
- the value added tax (Umsatzsteuer); and
- the tax on insurance premiums (Versicherungsteuer);

including the supplements levied thereon;

(b) in the case of the British Virgin Islands,

- the income tax;
- the payroll tax; and
- 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 Contracting 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) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
 - (b) “Federal Republic of Germany” means the area in which the tax law of the Federal Republic of Germany is in force;
 - (c) “competent authority” means
 - (i) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power; and
 - (ii) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - (d) “Contracting Party” means the Government of the Federal Republic of Germany or the Government of the British Virgin Islands as the context requires;
 - (e) “information” means any fact, statement, document or record in whatever form;
 - (f) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;
 - (g) “national” means

(i) in relation to the Federal Republic of Germany, any German within the meaning of the Basic Law (Grundgesetz) of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(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.

- (h) “person” includes an individual (“natural person”), a company or any other body of persons,
- (i) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (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) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,

- (m) “collective investment scheme” means any pooled investment vehicle irrespective of legal form; and “public collective investment scheme” means any collective investment scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) “Requested Contracting Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “Requesting Contracting Party” means the party to this Agreement submitting a request for or having received information from the Requested Contracting Party;
- (p) "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;
- (q) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Contracting Party;
- (r) “tax” means any tax covered by this Agreement;
- (s) “tax matters” means all tax matters including criminal tax matters.

2. As regards the application of this Agreement at any time by a Contracting 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 Contracting Party, any meaning

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

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a Requested Contracting Party shall provide upon request in writing by the Requesting Contracting Party 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 Contracting Party if it occurred in the territory of the Requested Contracting Party. If the information received by the competent authority of the Requested Contracting Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the Requesting Contracting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

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

3. If specifically requested by the competent authority of the Requesting Contracting Party, the competent authority of the Requested Contracting 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 Contracting Party shall ensure that its competent authority, for the purposes 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;
- (b) (i) information regarding the beneficial ownership of companies, partnerships, trusts and other persons, including 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, beneficiaries and protectors; 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 Contracting 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 Requesting Contracting Party shall provide the following information to the competent authority of the Requested Contracting Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;

- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Contracting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Contracting Party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the Requested Contracting Party or is in the possession or control of a person subject to the jurisdiction of the Requested Contracting Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Contracting Party, and that if the requested information were within the jurisdiction of the Requesting Contracting Party then the competent authority of the Requesting Contracting Party would be able to obtain the information under the laws of the Requesting Contracting Party.
- (h) a statement that the Requesting Contracting 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 Contracting Party shall forward the requested information as promptly as possible to the competent authority of the

Requesting Contracting Party. To ensure a prompt response, the competent authority of the Requested Contracting Party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the Requesting Contracting Party and shall notify the competent authority of the Requesting Contracting Party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the Requested Contracting 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 Contracting Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Contracting Party in writing explaining the reasons for its inability to obtain and provide the information or the obstacles encountered or for its refusal.

ARTICLE 6

TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. The Requested Contracting Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Contracting Party, allow representatives of the competent authority of the Requesting Contracting Party to enter the territory of the Requested Contracting Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the Requesting Contracting Party shall notify the competent authority of the Requested Contracting Party of the time and place of the intended meeting with the persons concerned.

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

3. If the request referred to in paragraph 2 is granted, the competent authority of the Requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Contracting 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 Contracting Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Contracting Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Contracting Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the Requesting Contracting 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 Contracting Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process;
3. 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.
4. The Requested Contracting Party shall not be required to obtain and provide:
 - (a) information which, if the requested information was within the jurisdiction of the Requesting Contracting Party, the competent authority of the Requesting Contracting Party would not be able to obtain under its laws;
 - (b) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer;
 - (c) information relating to a period more than six years prior to the tax period under consideration.
5. The Requested Contracting Party may decline a request for information if the information is requested by the Requesting Contracting Party to administer or enforce a provision of the tax law of the Requesting Contracting Party, or any requirement connected therewith, which discriminates against a national or citizen of the Requested Contracting Party as compared with a national or citizen of the Requesting Contracting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. Any information provided and received by the competent authority of a Contracting Party shall be treated as confidential and shall be protected in the same manner as information obtained under the domestic laws of that Contracting Party. It shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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, or the oversight of the above. For these purposes, information may be disclosed in administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the domestic laws of the Contracting Parties.
2. The 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 Contracting Party.
3. Information provided to a Requesting Contracting Party shall not be disclosed to any other jurisdiction.

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 Contracting Party. The rights and safeguards may not be applied by the Requested Contracting Party in a manner that unduly prevents or delays effective exchange of information.

ARTICLE 10

COSTS

The Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the Contracting Parties.

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 Contracting 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 endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.

4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 13

PROTOCOL

The attached Protocol shall be an integral part of this Agreement.

ARTICLE 14

ENTRY INTO FORCE

1. This Agreement shall enter into force one month from the date on which the Contracting 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 15

TERMINATION

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

Done at London in duplicate this 5th day of October 2010, in the German and English languages, each text being equally authentic.

For the Government of
Federal Republic of Germany
Boomgaarden

For the Government of
the British Virgin Islands Georg
Dancia Penn

Protocol
to the Agreement
between
The Government of the Federal Republic of Germany
and
The Government of the British Virgin Islands
on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of the Federal Republic of Germany and the Government of the British Virgin Islands (the “Contracting Parties”) have agreed at the signing of the Agreement on Assistance in Civil and Criminal Tax Matters through Exchange of Information on the following provisions which shall form an integral part of the said Agreement:

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
 - a) A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting 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.
 - b) Without limiting the generality of subparagraph a, 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, but does not include any generally applicable measures, applied by either Contracting party against, amongst others, members of the OECD generally.

2. Both Contracting Parties recognise that they are not at liberty to request information without an apparent nexus to an open enquiry or investigation, which is in line with number 57 of the commentary to the OECD Model Agreement on Exchange of Information on Tax Matters of 2002. With respect to subparagraph a of paragraph 5 of Article 5 it is understood that the identity of the person under examination or investigation must be determined by sufficient information, typically the name and, to the extent known, the address, account number or similar identifying information.
3. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement. In addition, the following shall apply:
 - a) The receiving agency may use such data in compliance with paragraph 2 of Article 8 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency and that conform with Article 8.
 - b) Notwithstanding the provisions of paragraph 2 of Article 8, the information may be used for other purposes, if under the law of both Contracting Parties it may be used for these other purposes and the competent authority of the supplying Contracting Party has agreed to this use. Use for other purposes without the prior approval of the supplying Contracting Party is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of personal freedom, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying Contracting Party must be asked without delay for retroactive authorisation of the change in purpose. If authorisation is refused, the information may no longer be used for the other purpose and the receiving agency shall erase the data supplied without delay and shall confirm in writing. Any damage which has been caused by use of the information for the other purpose must be compensated by the receiving Contracting Party. Information provided to a Requesting Contracting Party shall not be disclosed to any other jurisdiction.

- c) The competent authority of the supplying Contracting Party shall be obliged to exercise vigilance as to the accuracy of the data to be supplied and their foreseeable relevance within the meaning of Article 1 and the proportionality to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.
- d) The competent authority of the receiving Contracting Party shall on request inform the competent authority of the supplying Contracting Party on a case-by-case basis about the use of the supplied data and the results achieved thereby.
- e) The receiving agency shall inform the person concerned of the collecting of data at the supplying agency. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph e) shall apply accordingly. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting Party in whose sovereign territory the application for the information is made;
- g) The receiving agency shall bear liability under its domestic laws in relation to any person suffering unlawful damage in connection with the supply of data under the exchange of data pursuant to this Agreement. In relation to the person

who has suffered damage, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.

- h) The Contracting Parties shall ensure that their competent authorities and any other agencies involved keep official records of the supply and receipt of personal data for the requisite duration under domestic law.
 - i) Where the domestic law of the supplying Contracting Party contains special deadlines for the deletion of the personal data supplied, the competent authority of that Contracting Party shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
 - j) The Contracting Parties shall ensure that their competent authorities and any other agencies involved are obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.
4. Pursuant to Article 10 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested Contracting Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the Requesting Contracting Party. Examples of extraordinary costs include, but are not limited to, the following:
- a) reasonable fees charged for staff employed by third parties in assisting with the request;
 - b) reasonable fees charged by third parties for carrying out research;

- c) reasonable fees charged by third parties for copying documents;
- d) reasonable costs of engaging experts, interpreters, or translators;
- e) reasonable costs of conveying documents to the Requesting Contracting Party;
- f) reasonable litigation costs of the Requested Contracting Party in relation to a specific request for information;
- g) reasonable costs for obtaining depositions or testimony; and
- h) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears for an interview, deposition or testimony relating to a particular information request.

The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the Requesting Contracting Party will continue to pursue the request and bear the cost.

5. With respect to Article 11 it is understood that the need to use the English language refers to the request for information, the responses thereto and to other written communication between the competent authorities. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.
6. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting 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 earlier mentioned competent authorities or their authorised entities.

Competent authority
for the Federal Republic of Germany:

Bundeszentralamt für Steuern
53221 Bonn

In respect of criminal tax matters:

Bundesamt für Justiz
53094 Bonn

Competent authority
for the British Virgin Islands

Mr Neil Smith.....
Financial Secretary
Ministry of Finance
Government of the British Virgin Islands
33 Admin Drive, Road Town, Tortola,
British Virgin Islands VG1110

In respect of criminal tax matters:

The above-mentioned
competent authority.