

CAYMAN ISLANDS



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**THE TAX INFORMATION AUTHORITY LAW  
(2009 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) ORDER, 2010**



CAYMAN ISLANDS

**THE TAX INFORMATION AUTHORITY LAW  
(2009 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) ORDER, 2010**

In exercise of the powers conferred by section 3(5)(a) of the Tax Information Authority Law (2009 Revision), the Governor in Cabinet makes the following order -

1. This order may be cited as the Tax Information Authority (Tax Information Agreements) Order, 2010. Citation

2. For the purpose of setting out and giving effect to additional agreements for the provision of information in taxation matters, the Tax Information Authority Law (2009 Revision) is amended by inserting after the Thirteenth Schedule the following schedules - Additional Tax  
Information Agreements  
for the purposes of the  
Tax Information  
Authority Law (2009  
Revision)

**“FOURTEENTH SCHEDULE**

**EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE  
FRENCH REPUBLIC AND THE CAYMAN ISLANDS CONCERNING AN  
AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING  
TO TAX MATTERS**

30 September 2009

Monsieur Eric WOERTH  
Le Ministre  
Ministère du Budget, des Comptes Publics,  
de la Fonction Publique et de la Réforme de l'État  
139 rue de Bercy  
75572 Paris Cedex 12

Monsieur le Ministre,

I have the honour, on behalf of my Government, to acknowledge receipt of your letter of 16 September 2009 in which you advised me:

"J'ai l'honneur, d'ordre de mon Gouvernement, de vous proposer les dispositions contenues dans l'annexe de la présente lettre. Je vous serais obligée de me faire savoir si les termes de cette annexe recueillent l'agrément de votre Gouvernement.

Dans ce cas, la présente lettre et son annexe, ainsi que votre réponse, constitueront l'accord entre nos deux Gouvernements relatif à l'échange de renseignements en matière fiscale, accord qui entrera en vigueur après la notification par chacun de nos deux Gouvernements à l'autre de l'accomplissement des procédures internes requises par sa législation conformément à l'article 12. "

In response, I therefore inform you that pursuant to the powers conferred on me, the provisions and annex to this letter obtain the approval of the Government of Cayman Islands.

I assure you, Monsieur le Ministre, of my best regards.

Yours sincerely,

Hon. W. McKeever Bush, OBE, JP  
Leader of Government Business (Premier Designate)  
and Minister of Financial Services, Tourism and Development

Le Ministre  
Nos réf. : 1052 CAB BPC

Paris, le 16 SEP. 2009

Monsieur le Ministre,

J'ai l'honneur, d'ordre de mon Gouvernement, de vous proposer les dispositions contenues dans l'annexe à la présente lettre. Je vous serais obligé de me faire savoir si les termes de cette annexe recueillent l'agrément de votre Gouvernement.

Dans ce cas, la présente lettre et son annexe, ainsi que votre réponse, constitueront l'accord entre nos deux Gouvernements relatif à l'échange de renseignements en matière fiscale, qui entrera en vigueur après la notification par chacun de nos deux Gouvernements à l'autre de l'accomplissement des procédures internes requises par sa législation, conformément à l'article 12.

Je vous prie de croire, Monsieur le Ministre, à l'assurance de ma considération la meilleure.

Eric WOERTH

Hon. W. McKeeva Bush  
Minister for Financial Services  
Cayman Islands Government  
4<sup>th</sup> Floor, Government Administration Building  
George Town, Grand Cayman  
Cayman Islands  
KY1-9000



139, rue de Bercy - Télédocus 146 - 75572 Paris Cedex 12

#### **ANNEX**

**WHEREAS** the Government of the French Republic and the Government of Cayman Islands ("the Contracting Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

**WHEREAS** it is acknowledged that the Government of the Cayman Islands has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude and perform a tax information exchange agreement with the Government of the French Republic;

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

## **ARTICLE 1**

### **OBJECT AND SCOPE OF THE AGREEMENT**

1. 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 and tax matters covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.
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**

To enable the provisions of 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 held by, a resident or national or citizen of a Contracting Party. A Requested Party is not obliged to provide information, which is neither held by its authorities nor in the possession of or in the control of or obtainable by persons who are within its territorial jurisdiction.

## **ARTICLE 3**

### **TAXES COVERED**

1. The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
3. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties.

4. 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) “France” means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
  - b) “Cayman Islands” means the territory of 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 subsoil and their natural resources may be exercised;
  - c) the term “competent authority” means
    - i) in the case of France, the Minister of Finance, or his authorised representative;
    - ii) in the case of Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - d) the term “person” includes a natural person, a legal person, or any body or group of such persons;
  - e) the term “tax” means any tax to which the Agreement applies;
  - f) the term “Requesting Party” means the Party requesting information;
  - g) the term “Requested Party” means the Party requested to provide information;
  - h) the term “information gathering measures” means laws and administrative, judicial or regulatory procedures that enable a Contracting Party to obtain and provide the requested information;
  - i) the term “information” means any fact, statement, document or record in any form whatever;
  - j) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;

- k) 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 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 the Requested Party shall provide upon request in writing information for the purposes referred to in Article 1. Such information shall be exchanged 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 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 Contracting 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 Contracting Party shall ensure that its competent authorities, for the purposes 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)
  - (i) information regarding the legal ownership and the beneficial ownership of companies, partnerships, collective investment schemes, and other persons;



- (ii) in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and
- (iii) in the case of a foundation, information on the founders, members of the foundation council and beneficiaries.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party:

- a) the identity of the person under examination or investigation;
- b) the period of time with respect to which information is requested;
- c) the nature of the information requested and the form in which the Requesting Party wishes to receive it;
- d) the tax purposes for which the information is sought;
- e) grounds for believing that the information requested is present 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;
- f) to the extent known, the name and address of any person believed to be in possession of or control of or able to obtain the requested information;
- g) a statement that the request conforms with the law and administrative practices of the Requesting Party;
- h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulties.

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

- a) 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;
- 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, it shall inform the Requesting Party, explaining the reason for its inability.

## **ARTICLE 6**

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

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the prior

written consent of the 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 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 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 official 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 tax 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 to assist where the request is not made in conformity with this Agreement or where the disclosure of the information requested would be contrary to public policy (*ordre public*).

2. The provisions of this Agreement shall not impose upon a Contracting Party the obligation to provide items subject to legal privilege or to supply 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.

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

5. 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 received by the competent authority of a Contracting Party shall be kept confidential.
2. Information provided to the competent authority of the Requesting Party may be used for purposes other than the purposes stated in Article 1 with the prior express written consent of the Requested Party.
3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in this Agreement and used by such persons or authorities only for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
4. Information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## **ARTICLE 9**

### **ADMINISTRATIVE COSTS**

Ordinary costs incurred in providing assistance shall be borne by the Requested Party.

The Requested Party may request from the Requesting Party the reimbursement of direct extraordinary costs incurred in providing assistance.

## **ARTICLE 10**

### **IMPLEMENTING LEGISLATION**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement. This includes: availability of information, access to information, exchange of information.

## **ARTICLE 11**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting 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 these latter agreements, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching an agreement under this Article.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution should this become necessary.

## **ARTICLE 12**

### **ENTRY INTO FORCE**

This Agreement shall enter into force when each Contracting Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it 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 13**

### **TERMINATION**

1. Either Contracting Party may terminate this Agreement by serving a notice of termination.

2. 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 will be dealt with in accordance with the terms of this Agreement.

## **FIFTEENTH SCHEDULE**

### **AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER 2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Cayman Islands, and the Government of the Kingdom of the Netherlands, in respect of the Netherlands Antilles,

DESIRING to strengthen the relationship between them through cooperation in taxation matters,

Have agreed as follows:

#### **Article 1**

##### **Scope of the Agreement**

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall 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 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. 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.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to the Netherlands Antilles.

## **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. The taxes which are the subject of this Agreement are:
  - a) in the case of the Cayman Islands, taxes of every kind and description existing on the date of signature;
  - b) in the Netherlands Antilles,
    - (i) the income tax (inkomstenbelasting);
    - (ii) the wages tax (loonbelasting);
    - (iii) the profit tax (winstbelasting); and
    - (iv) the surtaxes on the income and profit tax (opcenten op de inkomsten- en winstbelasting).
2. This Agreement shall also apply 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 also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letter. 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 the Cayman Islands, or the Kingdom of the Netherlands, in respect of the Netherlands Antilles as the context requires;

- b) the term “Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea and 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;
- c) the term “the Netherlands Antilles” means the part of the Kingdom of the Netherlands that is situated in the Caribbean Sea and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part) including the territorial waters thereof and the part of the seabed and its subsoil under the Caribbean Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law but excluding the part thereof relating to Aruba;
- d) the term “competent authority” means
  - i) in the case of the Cayman Islands, the Tax Information Authority;
  - ii) in the case of the Netherlands Antilles, the Minister of Finance or his authorized representative;
- 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 the stock exchanges of the Cayman Islands, the Netherlands Antilles and 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 the applicant 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 Contracting 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;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” 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 and the tax period of the person concerned;
- b) to the extent known, the name and address of any person believed to be in possession of the requested information;
- c) 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;
- d) 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;

and, to the fullest extent possible:

- e) 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;
- f) the tax purpose for which the information is sought;

- 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.

## **Article 6**

### **Tax examinations abroad**

1. A Party may, on request, allow representatives of the competent authority of the other Party to enter its territory to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested 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 is subject to legal privilege or 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 requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
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 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**

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction or used for any other purpose without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

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

## **Article 10**

### **Language**

Requests for assistance and answers thereto shall be drawn up in English.

## **Article 11**

### **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 purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

## **Article 12**

### **Entry into force**

This Agreement shall enter into force on the first day of the second month after the later of the dates on which each of the Parties has notified the other, in writing, of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect;

- a) for criminal tax matters on that date, but only in respect of taxable periods beginning on or after January 1<sup>st</sup>, 2010 or, where there is no taxable period, all charges to tax arising on or after January 1<sup>st</sup>, 2010; 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 13**

### **Termination**

This Agreement shall remain in force until terminated by one of the Parties. Either Party may terminate the Agreement, through diplomatic channels, by giving notice of termination to the other Party at least six months before the end of any calendar year after the expiration of a period of three years from the date

of its entry into force. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

In the event of termination, both Parties shall remain bound by the provision of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Willemstad, this 29<sup>th</sup> day of October, 2009, in duplicate, in the English language.

FOR THE CAYMAN ISLANDS:

FOR THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF  
THE NETHERLANDS ANTILLES:

SAMUEL BULGIN, QC

ERSILIA DE LANNOOY

**AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED  
UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER  
2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES  
CONCERNING THE INTERPRETATION AND APPLICATION OF THE  
AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED  
UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER  
2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES  
FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO  
TAXES**

The Government of the Cayman Islands, and the Government of the Kingdom of the Netherlands, in respect of the Netherlands Antilles, (the "Parties"),

DESIRING to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

**I. Ad Article 5(5)(g)**

With respect to subparagraph g) of paragraph 5 of Article 5 of the Agreement between the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland, and the Kingdom of the Netherlands, in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes (herein after referred to as “the Agreement”) it is understood that the term “pursued all means available in its own territory” includes the requesting Party using exchange of information mechanisms it has in force with any third country in which the information is located.

**II. Ad Article 5**

If personal data is exchanged under the Agreement, the following additional provisions shall apply:

- a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
- b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby;
- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority;
- d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;
- e) 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. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. 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 Party in whose sovereign territory the application for the information is made;
- f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement. In relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency;
  - g) If the domestic law of the supplying authority provided, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
  - h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data;
  - i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

### **III. Ad article 12**

In the event that a Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, either Party may immediately initiate Competent Authority proceedings to resolve the matter. 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 any one or more of the following applies:

- a) the other Party does not engage in effective exchange of information;
- b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or,
- c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and 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 measure, applied by either Party against, amongst others, members of the OECD generally.

**IV.**

In the light of the experience of operating the Agreement, or to reflect changing circumstances, either Party may wish to propose a variation in the terms of this Agreement. If so, it is understood the other Party will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a) The competent authorities may initiate discussions in case:
  - (i) the Cayman Islands enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
  - (ii) the Kingdom of the Netherlands, in respect of the Netherlands Antilles, enters into an agreement with another jurisdiction comparable to the Cayman Islands which provides for other forms of exchange of information;
  - (iii) the Cayman Islands introduces new legislation which enables other forms of exchange of information;
  - (iv) the Netherlands Antilles introduces new legislation which enables other forms of exchange of information.
- b) If the Cayman Islands enters into arrangements with another jurisdiction comparable to the Netherlands Antilles for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Netherlands Antilles may initiate discussions with the Cayman Islands with a view to modifying the Agreement to have similar effect;
- c) If the Netherlands Antilles enters into arrangements with another jurisdiction comparable to the Cayman Islands for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Cayman Islands may initiate discussions with the Netherlands Antilles with a view to modifying the Agreement to have similar effect.

**V.**

This Protocol shall form an integral part of the Agreement between the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland, and the Kingdom of the Netherlands, in respect of the Netherlands Antilles for the exchange of information with respect to tax matters, and shall enter into force on the same date as the Agreement.



**VI.**

The Parties may, by mutual arrangement, amend this Protocol at any time in writing. Such amendment shall enter into force on the first day of the second month after the Parties have notified each other in writing that the constitutional or internal requirements for the entry into force of the amendment have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by their respective Governments, have signed this Protocol.

DONE at Willemstad, this 29<sup>th</sup> day of October, 2009, in duplicate, in the English language.

FOR THE CAYMAN ISLANDS:

SAMUEL BULGIN, QC

FOR THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF  
THE NETHERLANDS ANTILLES:

ERSILIA DE LANNOOY

Made in Cabinet the 23<sup>rd</sup> day of March, 2010.

Kim Bullings

Clerk of the Cabinet.

This order was affirmed by the Legislative Assembly on the 25<sup>th</sup> day of March, 2010 by Government Motion No. 12/2009-10 in compliance with section 3(5)(a) of the Tax Information Authority Law (2009 Revision).

Zena Merren-Chin

Clerk of the Legislative Assembly.