

AGREEMENT
BETWEEN
THE KINGDOM OF BELGIUM
AND
BERMUDA
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

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**THE KINGDOM OF BELGIUM,
THE FLEMISH COMMUNITY,
THE FRENCH COMMUNITY,
THE GERMAN-SPEAKING COMMUNITY,
THE FLEMISH REGION,
THE WALLOON REGION,
and THE BRUSSELS-CAPITAL REGION,
on the one hand,**

AND

**BERMUDA,
on the other hand,**

WHEREAS the Government of the Kingdom of Belgium and the Government of Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) ("the Contracting Parties") recognise that Bermuda's present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS 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 Bermuda 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 Kingdom of Belgium;

WHEREAS by entering into the Agreement, the Government of the Kingdom of Belgium recognizes that, according to the OECD criteria, Bermuda is not considered to be engaging into any harmful tax practices, nor is it considered to be a tax haven;

HAVE AGREED as follows:

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 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 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 will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

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

Article 2
Jurisdiction

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

Article 3
Taxes Covered

1. This Agreement shall apply to the following taxes:
 - a) in the case of Bermuda, the direct taxes of every kind and description imposed by the laws of Bermuda,
 - b) in the case of Belgium, taxes of every kind and description imposed on behalf of Belgium or of the political subdivisions or local authorities thereof.
2. This Agreement shall apply also 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. The competent authority of each Contracting Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement. Furthermore, the taxes covered may be expanded by mutual agreement of the Contracting Parties in the form of an exchange of letters.

Article 4 Definitions

1. In this Agreement, unless otherwise defined:

- a) "Belgium" means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
- b) "Bermuda" means the Islands of Bermuda, including its territorial sea;
- c) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form;
- d) "public collective investment fund or scheme" means any collective investment scheme or fund in which the purchase, sale or redemption of units, shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- e) "company" means any body corporate, as well as entities and special asset endowments that are treated as a body corporate for tax purposes;
- f) "competent authority" means,
 - (i) in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister; and
 - (ii) in the case of Belgium, as the case may be, the Minister of Finance of the federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;
- g) "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;
- h) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- i) "information" means any fact, statement or record in whatever form;
- j) "information gathering measures" means administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- k) "person" means an individual, a company, a dormant inheritance and any other body of persons;
- l) "principal class of shares" means the class or classes of shares representing a majority of the voting power or of the statutory capital of the company;
- m) "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;

- n) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - o) "requested Party" means the Contracting Party to this Agreement which is requested to provide information or has provided information in response to a request;
 - p) "requesting Party" means the Contracting Party to this Agreement submitting a request for or having received information from the requested Party;
 - q) "tax" means any tax covered by this Agreement.
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 or the competent authorities agree on a common meaning pursuant to the provisions of Article 10 of this Agreement, have the meaning that it has at that time under the laws 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 by the requesting Party 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 it had occurred in the territory of 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, the requested Party shall use all appropriate information gathering measures to provide the 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 domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Notwithstanding any contrary provisions in its domestic laws, each Contracting Party shall ensure that its competent authorities have the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and to 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 ownership of companies, partnerships, collective investment schemes and other persons, including:
 - (i) within the constraints of Article 2, ownership information on all such persons in an ownership chain;
 - (ii) in the case of collective investment schemes, information on shares, units and other interests in the fund or scheme;

- (iii) in the case of trusts, information on settlors, trustees and beneficiaries;
- (iv) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
- (v) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iv).

Further, 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 Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - a) the identity of the person under examination or investigation;
 - b) the taxable period for which the information is requested;
 - c) a statement of the information sought including the nature of the information requested and the form in which the requesting Party would prefer to receive it;
 - d) the tax purpose 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 or control of 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 or control of the requested information;
 - g) a statement that the request is in conformity with the law and administrative practises of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - h) 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 difficulty.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:
 - a) Confirm receipt of the request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
 - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6
Tax Examinations Abroad

1. By reasonable notice given in advance the competent authority of the requesting Party may request that the competent authority of the requested Party allows representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its 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 give reasonable notice to 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 allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 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 designated 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:
 - a) where the request is not made in conformity with this Agreement, and in particular where the requirements of Article 5 are not met; or
 - 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) of the requested party.
2. This Agreement shall not impose on the requested Party any obligation:
 - a) to provide information subject to legal privilege, or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5 paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process; or
 - b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under Article 5 paragraph 4 of this Agreement.
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 to provide information which 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 where the request is not made in conformity with 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

Any information provided and received by the competent authority of a Contracting 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 Contracting 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 for these purposes. The information may not be disclosed to any other person or entity or authority or any other jurisdiction, State or sovereign territory not party to this Agreement without the express written consent of the competent authority of the requested Party. Information received by the requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested Party.

Article 9

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct 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

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 the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this Agreement.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 11

Protocol

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

Article 12

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 13

Entry into Force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications, and 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

1. This Agreement shall remain into force until terminated. Either Contracting Party may terminate the Agreement by giving a notice of termination in writing via diplomatic channel.
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. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. After termination of this Agreement, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE in duplicate at Brussels, on 11 April 2013
and at Hamilton, on May 23, 2013, in the English language.

FOR THE KINGDOM OF BELGIUM:

FOR THE FLEMISH COMMUNITY:

FOR THE FRENCH COMMUNITY:

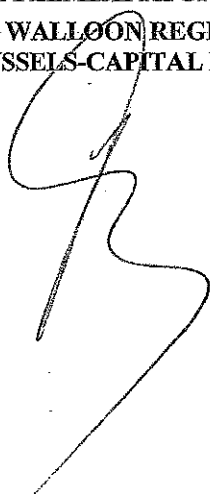
FOR THE GERMAN-SPEAKING COMMUNITY:

FOR THE FLEMISH REGION:

FOR THE WALLOON REGION:

FOR THE BRUSSELS-CAPITAL REGION:

FOR BERMUDA:



**PROTOCOL
TO
THE AGREEMENT
BETWEEN
THE KINGDOM OF BELGIUM
AND
BERMUDA
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

On the occasion of the signing of the Agreement between the Kingdom of Belgium and Bermuda for the exchange of information relating to tax matters, the Contracting Parties have agreed upon the following provisions, which are an integral part of this Agreement:

1. With respect to Article 5 paragraph 5 subparagraph a, it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if this identity can be determined from equivalent elements.
2. With respect to Article 9, it is mutually decided that:
 - a) ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested Party. Such ordinary costs will normally cover internal administration costs of the Competent Authority and any minor external costs such as the cost of couriers;
 - b) the following 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 Party:
 - (i) reasonable fees charged for staff employed by third parties in assisting with the request;
 - (ii) reasonable fees charged by third parties for carrying out extraordinary research;
 - (iii) reasonable supplementary costs of engaging experts, interpreters, or translators;
 - (iv) reasonable litigation costs of the Requested Party in relation to a specific request for information;
 - (v) reasonable costs for obtaining depositions or testimony; and
 - (vi) 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.

In no case shall extraordinary costs include costs which normally cover routine tasks performed by third parties such as obtaining and providing copies of documents.

- c) the Competent Authorities will consult each other in any particular case where extraordinary costs are likely to exceed \$US 1000 to determine whether the Requesting Party will continue to pursue the request and bear the cost.
 - d) in the event that the Requested Party finds it difficult or impossible to comply with a single or multiple request/s for information from the Requesting Party because of limited staff or financial resources, the Competent Authorities will consult, and if mutually decided, the Requesting Party will bear the costs associated with complying with a request or multiple requests.
3. The Governments of Bermuda and the Kingdom of Belgium will enter into negotiations for a separate agreement for the avoidance of double taxation with respect to taxes on income and on capital, provided it contains:
- a) a provision on the exchange of information based on the 2008 OECD Model. Such provision should cover trusts and foundations and be retroactive to some extent as concerns criminal files. An administrative arrangement should be concluded to organize the exchange of information;
 - b) an anti-abuse provision according to which for example, no reduction in tax or exemption from tax provided for in the agreement shall be applied to income paid in connection with a wholly artificial arrangement. An arrangement shall not be considered as wholly artificial where evidence is produced that the arrangement reflects economic reality;
 - c) an aid in recovery provision; and
 - d) a provision for the avoidance of double exemption with respect to individuals.

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

DONE in duplicate at *Brussels* on *11 April 2013*
and at *AMSTERDAM* on *MAY 23, 2013* in the English
language.

FOR THE KINGDOM OF BELGIUM:

FOR THE FLEMISH COMMUNITY:

FOR THE FRENCH COMMUNITY:

FOR THE GERMAN-SPEAKING COMMUNITY:

FOR THE FLEMISH REGION:

FOR THE WALLOON REGION:

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FOR BERMUDA:

