

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

AND

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA

ON

THE EXCHANGE OF INFORMATION WITH RESPECT TO TAX MATTERS

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THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA

WHEREAS the Government of the Kingdom of Belgium and the Government of the Commonwealth of Dominica (“the Contracting Parties”) recognise the need for co-operation and the exchange of information in criminal and civil tax matters;

WHEREAS the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to tax matters;

WHEREAS the Contracting Parties recognise that they will not engage in “fishing expeditions” or request information that is unlikely to be relevant to the tax affairs of a given taxpayer;

NOW, therefore, the Contracting Parties desiring to conclude an Agreement in order to facilitate the exchange of information with respect to tax matters which contains obligations on the part of the Contracting Parties only, have agreed as follows:

ARTICLE 1

SCOPE OF AGREEMENT

The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective 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. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Contracting Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2

JURISDICTION

1. To enable this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting Party.
2. 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. The existing taxes which are the subject of this Agreement are:
 - (a) in respect of the Commonwealth of Dominica, taxes of every kind and description imposed by or on behalf of the State, including customs duties;
 - (b) in respect of Belgium,
 - (i) the individual income tax;
 - (ii) the corporate income tax;
 - (iii) the income tax on legal entities;
 - (iv) the income tax on non-residents;
 - (v) the value added tax.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each 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 through the diplomatic channel.

ARTICLE 4

DEFINITIONS

1. In this Agreement:
- (a) the term “the Commonwealth of Dominica” means the State of the Commonwealth of Dominica, including the territorial waters thereof and any other area in the sea and in the air within which the State of the Commonwealth of Dominica in accordance with international law, exercises sovereign rights or its jurisdiction;
 - (b) the term “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;
 - (c) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
 - (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) the term “competent authority” means:
 - (i) in respect of the Commonwealth of Dominica, the Minister responsible for Finance, or the Minister’s authorised representative;
 - (ii) in respect of Belgium, the Minister of Finance or his authorised representative;
 - (f) the term “Contracting Party” means the Commonwealth of Dominica or Belgium as the context requires;
 - (g) 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 laws;
 - (h) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
 - (i) the term “information” means any fact, statement, document or record in any form whatever;
 - (j) the term “information gathering measures” means laws, regulations, and administrative or judicial procedures enabling a Contracting Party to obtain and provide the requested information;

- (k) the term “national” means any citizen and any legal person, partnership, company, trust, estate, association, or any other entity deriving its status as such from the laws in force in the territorial jurisdiction of a Contracting Party;
 - (l) the term “person” means an individual, a company, or any other body or group of persons;
 - (m) 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;
 - (n) 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;
 - (o) 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 restricted to a limited group of investors;
 - (p) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - (q) the term “Requested Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
 - (r) the term “Requesting Party” means the party to this Agreement submitting a request for or having received information from the Requested Party;
 - (s) the term “tax” means any tax covered by this Agreement.
2. Any term not defined in this Agreement 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 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. The competent authority of the Requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, the Requested 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 authority, for the purposes of this Agreement, has the authority to obtain and to provide upon request:
 - (a) information held by banks, other financial institutions, trusts, foundations and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment schemes, trusts, foundations, and other persons including information on all persons in an ownership chain, and
 - (i) in the case of collective investment schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
 - (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).
5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:
 - a) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
 - b) information which exceeds a legally required time period for retaining that information in the jurisdiction of the Requested Party and where that information is in fact no longer kept;
 - c) information in the possession or control of a person other than the taxpayer that does not relate to the taxpayer.
6. The competent authority of the Requesting Party shall provide the following information in writing to the competent authority of the Requested 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 of the information requested and the form in which the Requesting Party would prefer to receive that information;

- (d) the tax purpose for which the information is sought;
 - (e) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the tax laws of the Requesting Party;
 - (f) grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
 - (g) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
 - (h) a statement that the request is in conformity with this Agreement;
 - (i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulty.
7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request.
8. If the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal.

ARTICLE 6

TAX EXAMINATIONS ABROAD

1. The Requested Party may, to the extent permitted under its domestic laws, and 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 in connection with a request to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

3. If the request referred to in Paragraph 2 of this Article is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination, and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

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;
 - (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.
2. This Agreement shall not impose upon a Requested Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not be treated as a secret or trade process merely because it meets the criteria in that paragraph.
3. This Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister or other admitted legal representatives where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice; or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
4. Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor, or barrister, or admitted legal representative from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
5. 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.
6. The requested Party shall not be required to obtain and to provide information which the competent authority of the requesting Party would not be able to obtain under its own laws or in the normal course of administrative practice in response to a valid request made in similar circumstances from the requested Party under this Agreement.

7. 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 resident or national of the Requested Party as compared with a resident or national of the Requesting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. Any information received by 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. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.
2. In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199 of the Economic Partnership Agreement of 15 October, 2008 between the Cariforum States and the European Community and its Member States shall be applied accordingly.

ARTICLE 9

COSTS

Unless the competent authorities of the 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 Parties may mutually agree the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Article.

ARTICLE 11

IMPLEMENTATION LEGISLATION

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

ARTICLE 12

ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing through the diplomatic channel of the completion of their necessary internal procedures for the entry into force of this Agreement. The Agreement shall enter into force on the date of the later of the notifications, and shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1, in respect of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force or, where there is no taxable period, in respect of taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Agreement entered into force.

ARTICLE 13

TERMINATION

1. Either Contracting Party may terminate this Agreement by serving a notice of termination in writing through the diplomatic channel.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. Notwithstanding any termination of this Agreement, the 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, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Brussels, this day of 2010, in duplicate in the English language.

**FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM:**

**FOR THE GOVERNMENT OF
THE COMMONWEALTH OF DOMINICA:**