

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

AND

THE GOVERNMENT OF MONTSERRAT

**AS AUTHORISED BY
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

ON

THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

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**As authorised by the Government of the United Kingdom of Great Britain
and Northern Ireland**

WHEREAS the Government of Montserrat and the Government of Belgium (“the Parties”) recognise that Montserrat’s present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS it is acknowledged that Montserrat under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude and implement a tax information exchange agreement with Belgium;

WHEREAS the Government of Belgium welcomes the conclusion of this Agreement with the Government of Montserrat, which represents an important step in delivering the commitment Montserrat made to the OECD on the 27th February 2002 to respect the principles of transparency and exchange of information. The Government of Belgium considers that this Agreement demonstrates Montserrat’s commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters, consistent with the aims and objectives of the OCED Global Forum on Taxation. The Government of Belgium recognizes that Montserrat is committed to combating tax abuse by putting in place mechanisms which enhance transparency;

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

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

Article 1

Object and Scope of the Agreement

The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes or to the investigation or prosecution of tax matters in relation to such persons. 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 Party is not obliged to provide information which is neither held by its authorities, nor in the possession of, nor obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by or on behalf of the Parties:

- a) in the case of Montserrat, direct taxes of every kind and description.
- b) in the case 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 after the date of signature of this Agreement in addition to or in place of the existing taxes if the Parties, through their competent authorities, so agree. The competent authority of each 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:

- a) “Montserrat” means the United Kingdom Overseas Territory of Montserrat;
- b) “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) “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 shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) “competent authority” means,
 - (i) in the case of Montserrat, the Comptroller of Inland Revenue and
 - (ii) in the case of Belgium, the Minister of Finance 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 whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- i) “information” means any fact, statement, document or record in whatever form;
- j) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- k) “person” means an individual, a company or any other body or group of persons;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value 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 Parties;

- o) “requested Party” means the Party to this Agreement which is requested to provide information or has provided information in response to a request;
 - p) “requesting Party” means the 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 Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request 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 appropriate 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. Notwithstanding any contrary provisions in its domestic laws, each Party shall have the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and to provide:
 - 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 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).

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. A Contracting Party may request information from the other Party even if that requesting Party would not be able to obtain such information for its own purposes under its laws or in the normal course of its administrative practice if the requested information was within its jurisdiction.
6. Any request for information shall be formulated with the greatest possible details and shall specify in writing:
 - a) the identity of the person under examination or investigation;
 - b) the period for which the information is requested;
 - c) the nature of the information 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) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the taxes of the requesting Party covered under Article 3, with respect to a person identified in subparagraph (a) of this paragraph;
 - f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
 - g) to the extent known, the name and address of any person believed to be in possession of, or able to obtain 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. Notwithstanding the provisions of Article 10 in particular, the competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:
 - a) confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and
 - 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 Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

1. 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 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 attend a tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the tax examination shall be made by the requested Party conducting the examination.
4. The presence of tax officials of one Party in the territory of the other Party shall take place in conformity with the provisions of the guidelines contained in the appendix.

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 on 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 by reason of that fact alone be treated as 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 by the taxpayer.
4. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Party as compared with a citizen of the requesting Party in the same circumstances.

5. The provisions of 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 a professional legal advisor where such communications are:
 - a) produced for the purposes of seeking or providing legal advice; or
 - b) produced for the purposes of use in existing or contemplated legal proceedings;

but this paragraph shall not prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

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.
2. 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.

Article 9

Safeguards

The rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10

Costs

Unless the competent authorities of the 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 11

Implementing Legislation

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

Article 12

Language

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

Article 13

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the 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 on the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 14

Entry into Force

1. This Agreement shall enter into force on the thirtieth (30th) day after the later of the dates on which each of the Parties has notified the other in writing that the formalities constitutionally or otherwise required in their respective Party have been complied with.
2. Upon entry into force, the provisions of this Agreement shall have effect:
 - a) for criminal matters on the date of entry into force;
 - b) for all other matters covered in Article 1 on the date of entry into force but only in respect of taxable periods beginning on or after that date, where there is no taxable period, all charges arising on or after that date.

Article 15

Termination

1. Either Party may terminate the Agreement by giving a notice of termination in writing.
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 Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. A Party that terminates the Agreement 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, this,
in the English language.

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

**FOR THE GOVERNMENT
OF MONTSERRAT:**

**GUIDELINES
FOR THE PRESENCE OF TAX OFFICIALS OF ONE PARTY
IN THE TERRITORY OF THE OTHER PARTY**

Subject to the following provisions tax administration officials of one Party may be present on the territory of the other Party in order to obtain any information which is useful for determining the tax on income and the value added tax of one or both Parties.

A. General

A request to allow tax officials of one Party to be present during an examination on the territory of the other Party should be submitted in special cases. This includes in particular:

- a. cases in which there are indications of significant cross-border irregularities or fraud in one or both Parties;
- b. complex cases which make the presence of the tax officials desirable;
- c. cases where there is a risk of the time limit being exceeded, and where the presence of the tax officials can accelerate the examination;
- d. common examinations within the framework of bilateral or multilateral examinations.

The competent authorities may allow the presence of tax officials of one Party in the territory of the other Party in cases other than those referred to in 1. above.

On the basis of reciprocity a Party shall in similar cases allow the presence of tax officials of the other Party in its territory.

B. Conditions for submitting a request

The request for the presence of tax officials of a Party in the territory of the other Party shall be well-founded, shall be submitted in writing, and shall concern a particular examination. It shall specify the steps that the requesting party has taken to obtain the required information. The competent authority of the requested Party shall make a decision at the latest within three months counting from the date when the request was received. In urgent cases - which must be well-founded - a decision shall be made within one month.

If the request is granted, the competent authority of the requested Party shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination and of the identity of the authority or tax official designated to carry out the examination.

C. Conducting the examination

The examination shall be carried out by tax officials from the requested Party. The visiting officials shall be authorised to be present during those parts of the examination which may be interesting for the examination of the requesting Party. The visiting officials shall comply with the legislation of the requested Party.

The visiting officials may inspect, upon request, accounts, documents and other data and information carriers which may be interesting within the framework of the examination.

Subject to the legislative provisions of the Party in the territory of which the examination takes place, the visiting officials shall obtain, upon request, a copy and/or photocopy of the above-mentioned data and information.

The requesting Party may not make use of the data and information obtained within the context of the examination which is carried out in the other Party until it has been provided through the competent authorities.

D. Identification

Tax officials of a Party who are to be present in the territory of the other Party shall be specifically designated for that purpose in writing and shall carry an official authorisation certificate showing that they are acting on behalf of the first-mentioned Party. In any case the officials must be able to prove their status by means of a commission certificate or any other attestation issued by the office to which they belong.