

Agreement

between

the Government

of the Federal Republic of Germany

and

the Government of the Turks and Caicos Islands

for the Exchange of Information relating to Taxes

The Government  
of the Federal Republic of Germany  
and  
the Government  
of the Turks and Caicos Islands

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

Whereas the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the Government of the Turks and Caicos Islands under the terms of its Entrustment from the United Kingdom has the right to negotiate and conclude a tax information exchange agreement;

Whereas the Turks and Caicos Islands on 8th of March 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently has participated actively in the OECD Global Forum on Taxation;

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

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

## Article 1

### Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the 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.

## Article 2

### Jurisdiction

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

## Article 3

### Taxes Covered

1. This Agreement shall apply to the following taxes:

- (a) in respect of the Federal Republic of Germany:
  - the income tax (Einkommensteuer),
  - the corporation tax (Körperschaftsteuer),
  - the trade tax (Gewerbsteuer),
  - the capital tax (Vermögensteuer),
  - the inheritance tax (Erbschaftsteuer),

- the value added tax (Umsatzsteuer), and
- the tax on insurance premiums (Versicherungssteuer),  
including the supplements levied thereon;

(b) in respect of the Turks and Caicos Islands:

- the passenger tax,
- the stamp duty,
- the hotel and accommodation tax, and
- levies, duties, fines or exemptions relating to the importation,  
exportation, transshipment, transit, storage and circulation of goods, as  
well as prohibitions, restrictions and other similar controls on the  
movement of controlled items across national Boundaries.

2. This Agreement shall also apply 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, any of the taxes listed in sub-paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

#### Article 4

##### Definitions

1. For the purposes of this Agreement, unless otherwise defined:

- (a) “the Turks and Caicos Islands”, when used in a geographical sense, means the territory of the Turks and Caicos Islands;
- (b) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;

- (c) “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means
  - (i) in respect of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; in respect of criminal tax matters the Federal Ministry of Justice or the agency to which it has delegated its power,
  - (ii) in respect of the Turks and Caicos Islands, the Permanent Secretary in the Ministry of Finance or a person or authority designated by him in writing;
- (f) "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;
- (g) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting Party;
- (h) “information” means any fact, statement, document or record in whatever form;
- (i) “information gathering measures” means laws and administrative or judicial procedures enabling a Contracting Party to obtain and provide the information requested;
- (j) “person” means an individual, a company and any other body of persons;

- (k) “public collective investment scheme” means any collective 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,
- (l) “requested Contracting Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) “requesting Contracting Party” means the Contracting Party to this Agreement submitting a request for or having received information from the requested Contracting Party;
- (n) “tax” means any tax covered by this Agreement;
- (o) “tax matters” means all tax matters including criminal tax matters.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it had at that time the request was made 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

1. The competent authority of a requested Contracting Party shall provide upon request in writing by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct

being investigated would constitute a crime under the laws of the requested Contracting Party if it occurred in the territory of the requested Contracting Party.

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

3. If specifically requested by the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- (i) ownership information with respect to publicly traded companies or public collective investment schemes unless such information can be obtained without giving rise to disproportionate difficulties;
- (ii) information relating to a period more than five years prior to the year in which a request was made.

6. The competent authority of the requesting Contracting Party shall provide the following information to the competent authority of the requested Contracting Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the requesting Contracting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Contracting Party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the requested Contracting Party or is in the possession or control of a person within the jurisdiction of the requested Contracting Party;



- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Contracting Party, and that if the requested information were within the jurisdiction of the requesting Contracting Party then the competent authority of the requesting Contracting Party would be able to obtain the information under the laws of the requesting Contracting Party;
- (h) a statement that the requesting Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Contracting Party shall forward the requested information as promptly as possible to the competent authority of the requesting Contracting Party. To ensure a prompt response, the competent authority of the requested Contracting Party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the requesting Contracting Party and shall notify the competent authority of the requesting Contracting Party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested Contracting Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested Contracting Party refuses to provide the information, it shall immediately inform the

competent authority of the requesting Contracting Party to explain the reasons for its inability or the obstacles or its refusal.

## Article 6

### Tax Examinations Abroad

1. The requested Contracting Party may, to the extent permitted under its domestic laws, following reasonable notice of not less than fourteen days from the requesting Contracting Party, allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the requesting Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the persons concerned.
2. At the request of the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party may permit representatives of the competent authority of the requesting Contracting Party to be present at the appropriate part of a tax examination in the territory of the requested Contracting Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Contracting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Contracting Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Contracting Party conducting the examination.

## Article 7

### Possibility of Declining a Request

1. The competent authority of the requested Contracting Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the requesting Contracting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Contracting Party.
  
2. This Agreement shall not impose upon a Contracting Party any obligation
  - (a) to provide items subject to legal privilege, or 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;
  - (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 paragraph 4 of Article 5.
  
3. A request for information shall not be refused on the grounds that the tax liability giving rise to the request is disputed by the taxpayer.

4. The requested Contracting Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Contracting Party, the competent authority of the requesting Contracting Party would not be able to obtain under its laws.

5. The requested Contracting Party may decline a request for information if the information is requested by the requesting Contracting Party to administer or enforce a provision of the tax law of the requesting Contracting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Party as compared with a citizen of the requesting Contracting Party in the same circumstances.

## Article 8

### Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be treated as secret in the same manner as information obtained under the domestic laws of the Contracting Parties. It shall be disclosed only to persons or authorities (including courts and administrative bodies) officially concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in administrative or criminal investigations, in public court proceedings or in judicial decisions.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Contracting Party.

3. Information provided to a requesting Contracting Party shall not be disclosed to any other jurisdiction.

4. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

## Article 9

### Safeguards

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party. The rights and safeguards may not be applied by the requested Contracting Party in a manner that unduly prevents or delays effective exchange of information.

## Article 10

### Administrative Costs

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

## Article 11

### Protocol

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

## Article 12

### Implementing Legislation

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

## Article 13

### Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree on other forms of dispute resolution.

## Article 14

### Entry into Force

1. This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. Upon the date of entry into force, this Agreement shall have effect:

a) for criminal tax matters on that date; and

b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

## Article 15

### Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.

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

3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

Done at Grand Turk this 4<sup>th</sup> of June 2010, in duplicate, in the German and English languages, each text being equally authentic.

For the Government of the  
Federal Republic of Germany  
Jürgen Engel

For the Government of the  
Turks and Caicos Islands  
Gordon Wetherell



Protocol  
to the Agreement  
between  
the Government of the Federal Republic of Germany  
and  
the Government of the Turks and Caicos Islands  
for the Exchange of Information relating to Taxes

The Government of the Federal Republic of Germany and the Government of the Turks and Caicos Islands (the “Contracting Parties”) have agreed at the signing of the Agreement between the two Governments for the Exchange of Information relating to Taxes on the following provisions which shall form an integral part of the said Agreement:

1. So long as this Agreement is in force and effective, it is the intention of the Contracting Parties not to introduce prejudicial or restrictive measures based on harmful tax practices or to apply such measures to residents or nationals of either Contracting Party. However, in the event that a Contracting Party has reason to believe that the other Contracting Party has introduced such prejudicial or restrictive measures, both Contracting Parties shall immediately initiate proceedings to resolve the matter. A "prejudicial or restrictive measure based on harmful tax practices" means a measure applied by one Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measure" the term includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures include any measure which relates, directly or indirectly, to taxation. However, they do not include any generally applicable

measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

2. With respect to subparagraph a) of paragraph 6 of Article 5 it is understood that the identity of the person under examination or investigation may be determined by identifying information other than the name.
3. With respect to paragraph 4 of Article 8 the Contracting Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply:
  - a) The receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency and that conform with Article 8. Such use is also permitted, subject to the written consent required under paragraph 2 of Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security, if under the law of both Contracting Parties it may be used for these other purposes;
  - b) The receiving agency shall on request inform the supplying agency 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 agency;

- d) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and their foreseeable relevance within the meaning of Article 1 and that they are proportionate to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information. Any bans on data supply prescribed under the law of the supplying Contracting Party shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay;
- e) The receiving agency shall inform the person concerned of the data collection by the supplying agency. Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed;;
- f) The receiving agency shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the supply of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead in its defence that the damage had been caused by the supplying agency. If the receiving agency pays compensation for damage as a result of the use of incorrect data supplied, the supplying agency shall refund to the receiving agency the total amount of the compensation paid;

- g) If the law applicable to the supplying agency provided, with respect to the personal data supplied, for erasure within a certain period of time that agency shall inform the receiving agency 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 agencies shall be obliged to keep official records of the supply and receipt of personal data;
- i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

4. Pursuant to Article 10 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the requested Contracting Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the applicant Contracting Party. Examples of extraordinary costs include, but are not limited to, the following:

- a) reasonable fees charged for staff employed by third parties in assisting with the request;
- b) reasonable fees charged by third parties for carrying out research;
- c) reasonable fees charged by third parties for copying documents;

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

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

5. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier-mentioned competent authorities or their authorised entities.

Competent authority  
for the Federal Republic of Germany:

Bundeszentralamt für Steuern  
53221 Bonn

Competent authority  
for the Turks and Caicos Islands:

Ministry of Finance and Economic  
Planning  
NJS Francis Building

Pond Street,  
Grand Turk  
Turks and Caicos Islands

In respect of criminal tax matters:

Bundesamt für Justiz  
53094 Bonn

In respect of criminal tax matters:

The above-mentioned  
competent authority