

Agreement

between

the Government

of the Federal Republic of Germany

and

the Government of the Isle of Man

on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of the Federal Republic of Germany

and

the Government of the Isle of Man

Whereas the Government of the Federal Republic of Germany and the Government of the Isle of Man 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 Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Government of the Federal Republic of Germany;

Whereas the Isle of Man on the 13th December 2000 entered into a political commitment to the OECD's principles of effective exchange of information and actively participated in the drafting of the OECD Model Agreement on Exchange of Information in Tax Matters;

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

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

Have agreed as follows:

Article 1
Scope of the Agreement

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 the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment or collection of such taxes with respect to persons subject to such taxes, or to the investigation or the prosecution of tax matters in relation to such persons. A requested Contracting 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. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable.

Article 2
Taxes Covered

1. This Agreement shall apply to the following taxes:

(a) in respect of the Isle of Man:

taxes on income or profit;

(b) in respect of the Federal Republic of Germany:

the income tax (Einkommensteuer),
the corporation tax (Körperschaftsteuer),
the trade tax (Gewerbsteuer),
the capital tax (Vermögensteuer) and
the inheritance tax (Erbschaftsteuer),
including the supplements levied thereon.

2. This Agreement shall apply also to any identical taxes that are imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of substantial changes in laws which may affect the obligations of the other Contracting Party pursuant to this Agreement.

Article 3

Definitions

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

- (a) "Isle of Man" means, when used in a geographical sense, the territory of the Isle of Man, including its territorial sea, in accordance with international law;
- (b) "Federal Republic of Germany" means, when used in a geographical sense, the area in which the tax law of the Federal Republic of Germany is in force;
- (c) "competent authority" means
 - (i) in respect of the Isle of Man, the Assessor of Income Tax or his delegate,
 - (ii) 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;
- (d) the term "a Contracting Party" means the Government of the Federal Republic of Germany or the Government of the Isle of Man, as the context requires; the

term "Contracting Parties" means the Government of the Federal Republic of Germany and the Government of the Isle of Man;

- (e) "criminal laws" means all criminal laws designated as such under the respective law of the Contracting Parties, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (f) "tax matters" means all tax matters including criminal tax matters;
- (g) "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 Contracting Party;
- (h) "information gathering measures" means laws and administrative or judicial procedures enabling a requested Contracting Party to obtain and provide the information requested;
- (i) "information" means any fact, statement, document or record in whatever form;
- (j) "person" includes an individual, a company or any other body or group of persons;
- (k) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (l) "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;

- (m) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (n) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (o) "public collective investment scheme" means any scheme or fund, in which the purchase, sale or redemption of shares, units or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (p) "requested Contracting Party" means the Contracting Party to this Agreement which is requested to provide or has provided information in response to a request;
- (q) "requesting Contracting Party" means the Contracting Party to this Agreement submitting a request for or having received information from the requested Contracting Party;
- (r) "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at the time the request was made 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 4

Exchange of Information Upon Request

1. The competent authority of the requested Contracting Party shall provide upon request by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Contracting Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Contracting Party if it had occurred in the territory of the requested Contracting Party. The competent authority of the requesting Contracting 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 Contracting Party is not sufficient to enable it to comply with the request for information, the requested Contracting Party shall at its own discretion use all relevant information gathering measures necessary 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 laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities have the authority, to obtain and provide, through its competent authority and 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, trusts, foundations, "Anstalten" and other persons, including:
 - (i) 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;
 - (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 equivalent information in the case of entities that are neither trusts nor foundations,

provided that this Agreement does not create an obligation for a Contracting Party to obtain or provide 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.

5. Any request for information shall be formulated with the greatest detail possible in specifying 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 Contracting 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 tax administration and enforcement of the requesting Contracting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested Contracting Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Contracting Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Contracting Party, that if the requested information was 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 or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (i) a statement that the requesting Contracting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

Article 5

Tax Examination Abroad

1. With reasonable notice, the requesting Contracting Party may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting 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 Contracting Party shall notify the competent authority of the requested Contracting 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 Contracting Party, the competent authority of the requested Contracting Party may permit representatives of the competent authority of the requesting Contracting Party to attend 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 6

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 public policy.

2. This Agreement shall not impose upon a requested Contracting Party any obligation 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 4 shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested 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 or in the normal course of administrative practice.

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 Contracting Party as compared with a citizen of the requesting Contracting Party in the same circumstances.

Article 7 Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 public court proceedings or in judicial decisions.

3. Such 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.

4. Information provided to a requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction.

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

Article 8

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Contracting Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Contracting Party. The competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Contracting Party shall consult with the competent authority of the requesting Contracting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

Article 9
Language

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

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 use their best efforts 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 Articles 4, 5 and 8.

Article 11
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, the provisions of 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 12

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 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 the 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. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

Done at Berlin, this second day of March, 2009, in duplicate, in the German and English languages, each text being equally authentic.

For the Government
of the Federal Republic of Germany

For the Government
of the Isle of Man

Dr Georg Witschel
Nicolette Kressl

Allan R. Bell

Protocol
to the Agreement
between
the Government of the Federal Republic of Germany
and
the Government of the Isle of Man
on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of the Federal Republic of Germany and the Government of the Isle of Man have agreed at the signing of the Agreement between the two Governments on Assistance in Civil and Criminal Tax Matters through Exchange of Information (hereinafter "the Agreement") on the following provisions which shall form an integral part of the Agreement:

1. With respect to paragraph 5 of Article 7 the Contracting Parties shall ensure for 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 requesting Contracting Party may use such data only for the stated purpose and shall be subject to the conditions prescribed by the requested Contracting Party; such use is also permitted, subject to the written consent required under paragraph 3 of Article 7, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
- (b) the requesting Contracting Party shall on request inform the requested Contracting Party about the use of the provided data and the results achieved thereby;

- (c) personal data may be provided only to the competent authorities of the Contracting Parties. Any subsequent disclosure to persons or authorities specified in paragraph 2 of Article 7 of the Agreement may be effected only with the prior approval of the requested Contracting Party;
- (d) the competent authority of the requested Contracting Party shall be obliged to ensure that the data to be provided are accurate and that they are necessary for and proportionate to the purpose for which they are provided. Any bans on data provision prescribed under the law of the requested Contracting Party shall be observed. If it emerges that inaccurate data or data which should not have been provided have been provided, the requesting Contracting Party shall be informed of this without delay. That Contracting Party shall be obliged to correct or erase such data without delay;
- (e) upon application to the requesting Contracting Party, the person concerned shall be informed of the provided data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the law of the requesting Contracting Party;
- (f) the requesting Contracting Party shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the provision of data pursuant to the Agreement. In relation to the damaged person, the requesting Contracting Party may not plead in its defence that the damage had been caused by the requested Contracting Party;
- (g) if the law of the requested Contracting Party provides, with respect to the personal data provided, for erasure within a certain period the requested Contracting Party shall inform the requesting Contracting Party accordingly.

Irrespective of such periods, provided personal data shall be erased once they are no longer required for the purpose for which they were provided;

- (h) the competent authorities of the Contracting Parties shall be obliged to keep official records of the provision and receipt of personal data;
- (i) the Contracting Parties shall be obliged to take effective measures to protect the personal data provided against unauthorised access, unauthorised alteration and unauthorised disclosure.

2. With respect to Article 8 of the Agreement the term "extraordinary costs" shall be interpreted as follows:

- (a) examples of extraordinary costs include, but are not limited to, the following:
 - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the requesting Contracting Party;
 - (ii) reasonable costs for stenographic reports and interviews, depositions or testimony;
 - (iii) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in the Federal Republic of Germany or the Isle of Man for interview, deposition or testimony relating to a particular information request;
 - (iv) reasonable fees for non-government counsel appointed or retained, with the approval of the competent authority of the requesting Contracting Party, for litigation in the courts of the requested Contracting Party related to a specific request for information;

- (b) extraordinary costs do not include ordinary administrative and overhead expenses incurred by the requested Contracting Party in reviewing and responding to information requests submitted by the requesting Contracting Party;
- (c) if the extraordinary costs pertaining to a particular request are expected to exceed 500 Euros or the sterling equivalent, the competent authority of the requested Contracting Party shall contact the competent authority of the requesting Contracting Party to determine whether the requesting Contracting Party wants to pursue the request and bear the costs;
- (d) the competent authorities of the Contracting Parties shall consult not later than 12 months after the date that the Agreement enters into force, and upon the request of either competent authority thereafter, with respect to the costs incurred or potentially to be incurred under the Agreement and with a view to minimising such costs.

3. With respect to Article 9 it is understood that the need to use the English language refers to the request for information, the responses thereto and to other written communication between the competent authorities. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement will be in writing directly to the competent authority of the other Contracting Party at the addresses 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 delegates.

Competent Authority
for the Federal Republic of Germany:

Bundeszentralamt für Steuern
53221 Bonn

In respect of criminal tax matters:

Bundesamt für Justiz
53094 Bonn

Competent Authority
for the Isle of Man:

Assessor of Income Tax
Government Office
Douglas

In respect of criminal tax matters:

The above-mentioned authority.