

AGREEMENT BETWEEN THE  
GOVERNMENT OF THE CZECH REPUBLIC  
AND THE GOVERNMENT OF THE  
BRITISH VIRGIN ISLANDS FOR THE  
EXCHANGE OF INFORMATION  
RELATING TO TAXES

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

**Whereas** the Government of the Czech Republic and the Government of the British Virgin 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 Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

**Whereas** the Contracting Parties are both committed to the Organisation for Economic Cooperation and Development principles of transparency and exchange of information and wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

**Whereas** the Contracting Parties recognise that they will never engage in “fishing expeditions”;

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

## **Article 1 Object and 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 domestic 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 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 Party is not obligated 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 taxes which are the subject of this Agreement are:

a) in the case of the Czech Republic:

- (i) the tax on income of individuals;
- (ii) the tax on income of legal persons;
- (iii) the tax on immovable property;
- (iv) the value added tax.

b) in the case of the British Virgin Islands:

- (i) the income tax;
- (ii) the payroll tax; and
- (iii) the property tax.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

### **Article 4 General definitions**

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

a) "The Czech Republic" means the territory of the Czech Republic over which, under Czech legislation, and in accordance with international law, the sovereign rights of the Czech Republic are exercised;

b) "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;

c) "Contracting Party" means the Czech Republic or the British Virgin Islands as the context requires;

d) "competent authority" means

- i) in the case of the Czech Republic the Minister of Finance or his authorised representative;
- ii) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;

- e) “national” means
- i. in relation to the Czech Republic any individual possessing the nationality of the Czech Republic or any legal person, partnership, association or other entity deriving its status as such from the laws in the Czech Republic;
  - ii. in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No.1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands.
- f) "person" includes an individual, a company and any other body of persons;
- g) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes.
- h) "publicly traded company" means any company whose principal class of shares is listed on a recognized 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;
- i) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- j) "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- k) “collective investment fund or scheme” means any pooled investment instrument, irrespective of legal form. 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;
- l) "tax" means any tax to which the Agreement applies;
- m) "Requesting Party" means the Contracting Party requesting information;
- n) "Requested Party" means the Contracting Party requested to provide information;
- o) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

- p) "information" means any fact, statement or record in any form whatever;
- q) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- r) "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.

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 has at that time under the law of that Contracting Party for the purposes of taxes to which the Agreement applies, any meaning under the applicable tax law 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 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 Party if such conduct occurred in the Requested Party. If the information received by the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the Requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

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 authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; 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:

- (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 the legally required time period for retaining the 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 directly relate to the taxpayer.

6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party 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) a statement of the information sought including a description of the specific evidence sought and the form in which the Requesting Party wishes to receive the information from the Requested Party;
- (d) the tax purpose 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 Party;
- (e) reasonable grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (g) a statement that the request is in conformity with the law and administrative practices of the Requesting Party, that if the requested information was within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

a) Confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6 Tax Examinations Abroad**

1. A Requested Party may, to the extent permitted under its domestic laws, 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 to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the 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 Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax 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 the public policy (ordre public) of the Requested Party.

2. The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

4. (a) 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 an attorney, solicitor or other admitted legal representative 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.

(b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall 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.

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

6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a 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 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, or the oversight of the above. For these purposes, information may be disclosed 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 Party.

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

### **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 Party. 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 Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisors 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 Implementation measures**

The Contracting Parties shall (where they have not already done so) adopt and publish the laws, regulation and administrative provisions necessary to comply with, and give effect to, the terms of the Agreement.

### **Article 12 Language**

Request for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 14.

### **Article 13 Other International Agreements or Arrangements**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to the co-operation in tax matters.

**Article 14**  
**Mutual Agreement Procedure**

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

**Article 15**

**Protocol**

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

**Article 16**  
**Entry into force**

Each of the Contracting Parties shall notify in writing the other of the completion of the procedures required by its domestic law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications and its provisions shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 in respect of any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

**Article 17**  
**Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving written notice of termination. In such event, the Agreement shall cease to have effect in both Contracting Parties 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.
2. If this Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorized thereto, have signed the Agreement.

Done at Prague in duplicate, this 13<sup>th</sup> day of June 2011, in the Czech, and English languages, each text being equally authentic.

For the Government of  
the Czech Republic

Ladislav Minčič

For the Government of  
the British Virgin Islands

Dancia Penn

**PROTOCOL TO THE AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE CZECH REPUBLIC AND THE  
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

**No Prejudicial or Restrictive Measures**

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
  - a) A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/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.
  - b) Without limiting the generality of subparagraph a), the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measures, applied by either Contracting party against, amongst others, members of the OECD generally.

**Costs**

2. 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 Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs. 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 Requesting 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 Requesting Party;
  - f) reasonable litigation costs of the Requested 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.

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