

AGREEMENT
BETWEEN
DENMARK
AND
BERMUDA
ON
THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

Whereas the Government of Denmark welcomes the conclusion of this Agreement with the Government of Bermuda, which represents an important step in delivering the commitment it made to the OECD in 2000 to respect the principles of transparency and exchange of information. The Government of Denmark considers that this Agreement demonstrates Bermuda's commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters within an acceptable timeline, consistent with the aims and objectives of the OECD Global Forum on Taxation. The Government of Denmark recognizes that Bermuda is committed to combating tax abuse by putting in place mechanisms which enhance transparency;

Whereas the Government of Denmark recognizes that this Agreement is an important contribution to meeting the need for countries to develop a global information exchange network to combat effectively international tax evasion;

Whereas by entering into the Agreement, the Government of Denmark recognizes that, according to the OECD criteria, Bermuda is not considered to be engaging in any harmful tax practices, nor is it considered to be a tax haven, in relation to the Government of Denmark;

The Government of Denmark and the Government of Bermuda, desiring to facilitate the exchange of information with respect to taxes

have agreed as follows:

ARTICLE 1

Object and scope of the Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is 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 existing taxes which are the subject of this Agreement are direct taxes of every kind and description imposed in the Parties.
2. This Agreement shall also apply 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. The competent authorities of the Parties shall notify each other of any substantial 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) "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;

(b) "Bermuda" means the Islands of Bermuda;

(c) "applicant Party" means the Party requesting information;

(d) "collective investment fund or scheme" means any pooled investment vehicle, 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;

(e) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) "competent authority" means, in the case of Denmark, the Minister for Taxation or his authorized representative and, in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;

- (g) "Party" means Denmark or Bermuda as the context requires;
- (h) "information" means any fact, statement or record in any form whatever;
- (i) "information-gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (j) "national" means:
 - (i) in the case of Denmark,
 - (A) any Danish citizen, and
 - (B) any legal person, partnership, association or other entity deriving its status as such from the laws in force in Denmark; and
 - (ii) in the case of Bermuda, any legal person, partnership, company, trust, state, association or other entity deriving its status as such from the laws in force in Bermuda;
- (k) "person" includes an individual, a company and any other body 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 requested to provide information;

(p) "resident" means:

(i) in the case of Denmark, any person who, under the laws of Denmark, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes the state itself and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Denmark in respect only of income from sources in Denmark;

(ii) in the case of Bermuda, an individual who is ordinarily resident in Bermuda; and a company, partnership, trust or association created under the laws of Bermuda;

(q) "serious tax evasion" means wilfully, with dishonest intent to defraud the public revenue, evading or attempting to evade any tax liability where an affirmative act or omission constituting an evasion or attempted evasion has occurred. The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability, and the conduct involved must either constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either Party, or constitute falsifying or concealing identity. The competent authorities shall agree on the scope and extent of matters falling within this definition; and

(r) "tax" means any tax to which this Agreement applies.

2. The term "relevant" wherever used in the Agreement with respect to information, shall be interpreted in a manner that ensures that information will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

3. As regards the application of this Agreement at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at the 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 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.

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 applicant 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 applicant 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 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 ownership of companies, partnerships 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,

beneficiaries, and the position in an ownership chain; and in the case of foundations, information on founders, members of the foundation council and beneficiaries and the position in an ownership chain.

5. This Agreement does not create an obligation on the 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 relating to a period more than six years prior to the tax period under consideration;

(c) information unless the applicant Party has pursued all means available in its own Party to obtain the information, except those that would give rise to disproportionate difficulties;

(d) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. Where the applicant Party requests information with respect to a matter which does not constitute serious tax evasion, a senior official of its competent authority shall certify that the request is relevant to, and necessary for, the determination of the tax liability of the taxpayer under the laws of the applicant Party.

7. If information is requested that relates to a person that is not a resident, nor a national, of one or other of the Parties, it also shall be established to the satisfaction of the competent authority of the requested Party that such information is necessary for the proper administration and enforcement of the fiscal laws of the applicant Party.

8. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the relevance of the information sought to the request:

- (a) the identity of the taxpayer under examination or investigation;
 - (b) grounds for believing that the information requested is in the possession or control of a person subject to the jurisdiction of the requested Party;
 - (c) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
 - (d) a statement that the request conforms to the law and administrative practice of the applicant Party and would be obtainable by the applicant Party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested Party under this Agreement;
 - (e) a statement that the applicant Party has pursued all means available in its own Party to obtain the information, except those that would give rise to disproportionate difficulties;
- and, to the fullest extent possible:
- (f) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought and the form, in which the applicant Party prefers to receive the information;
 - (g) the tax purposes for which the information is sought and why it is relevant to the determination of the tax liability of a taxpayer under the laws of the applicant Party;
 - (h) information that such taxpayer is a resident in, or national of, one of the Parties, or that it is necessary for the determination of the tax liability of a taxpayer under the laws of the applicant Party;
 - (i) the period of time with respect to which the information is required for the tax purposes.

9. 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 requested Party may allow, to the extent permitted under its domestic law, representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant 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 applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in 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 applicant 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.

ARTICLE 7

Possibility of declining a request

1. The competent authority of the requested Party may decline to assist where:
 - (a) the request is not made in conformity with this Agreement;
 - (b) the disclosure of the information requested would be contrary to the public policy of the requested Party;
 - (c) the applicant Party would not be able to obtain the information
 - (i) under its own laws for purposes of administration or enforcement of its own tax laws or
 - (ii) in response to a valid request from the requested Party under this Agreement.
2. The provisions of this Agreement shall not impose on a 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 paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a 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:
 - (a) are communications between a professional legal adviser and a client made in connection with the giving of legal advice to the client;
 - (b) are communications between a professional legal adviser and a client, professional legal adviser acting for the client and another person, or the client and another person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) include items enclosed with or referred to in such communications and made:

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when the items are in the possession of a person who is entitled to possession of them.

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

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

ARTICLE 8

Confidentiality

Any information received by a 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 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, and to persons concerned with the regulation of disclosure and use of information. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

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

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 Parties.

ARTICLE 11

No prejudicial or restrictive measures

1. In the event that a Party has reason to believe that the other Party has introduced prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, both Parties shall immediately initiate competent authority proceedings to resolve the matter.

2. A prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Party to residents or nationals of either Party on the basis that the other 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.

3. Without limiting the generality of the term "prejudicial or restrictive measures" it 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 relate, directly or indirectly, to taxation matters. However, they do not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

ARTICLE 12

Mutual Agreement Procedure

1. The competent authorities of the Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Article.

ARTICLE 13

Entry into Force

This Agreement shall enter into force on the thirtieth 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. Upon the date of entry into force, it shall have effect:

- (a) For criminal tax matters on that date; however, no earlier than January 1st, 2010;
and

(b) For all other matters covered in Article 1 on that date; however, no earlier than January 1st, 2010, 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 14
Termination

1. Either Party may terminate the Agreement by serving a notice of termination on the other Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party.
3. In the event of termination, both 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 authorised in that behalf by the respective parties, have signed this Agreement.

Done at _____ this _____ in duplicate in the English language.

FOR THE GOVERNMENT OF
DENMARK

FOR THE GOVERNMENT OF
BERMUDA

PROTOCOL
BETWEEN
THE GOVERNMENT OF DENMARK
AND
THE GOVERNMENT OF BERMUDA
CONCERNING
THE INTERPRETATION OR APPLICATION OF THE AGREEMENT BETWEEN
THE GOVERNMENT OF DENMARK AND THE GOVERNMENT OF BERMUDA
ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of Denmark and the Government of Bermuda (the “Parties”), desiring to facilitate the exchange of information with respect to taxes, have reached the following understanding:

This Protocol shall form an integral part of the Agreement and shall enter into force in accordance with Article 13 at the same time the Agreement enters into force.

The Competent Authorities may, by mutual arrangement amend this Protocol at any time in writing. The amended Protocol will come into effect on the date of the final letter arranging the amendment.

The Government of Bermuda will take the measures necessary to repeal any provision of its domestic legislation that requires that information is physically present for the purposes of fulfilling this Agreement. The Government of Denmark in turn will pursue all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

In relation to paragraphs 6, 7 and 8(h) of Article 5 the term “necessary” shall not be interpreted to restrict the general objectives as set out in Article 1. Certification by a senior official shall be sufficient to meet the requirements of those provisions.

In witness whereof the undersigned being duly authorised in that behalf by the respective Parties, have signed this Protocol.

Done at _____ this _____ in duplicate in the English language.

**FOR THE GOVERNMENT
OF DENMARK**

**FOR THE GOVERNMENT
OF BERMUDA**