

AGREEMENT BETWEEN

THE GOVERNMENT OF CANADA

**AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS UNDER
ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS**

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WHEREAS THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS (the “Parties”) have demonstrated a commitment to high standards for the effective exchange of information with respect to both criminal and civil tax matters, consistent with the objective of the Global Forum on Transparency and Exchange of Information for Tax Purposes;

WHEREAS the Parties recognize that this Agreement is an important contribution to meeting the need for countries to develop a global information exchange network to foster international co-operation in tax matters;

WHEREAS the Government of the British Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the Organisation for Economic Co-operation and Development’s principles of transparency and exchange of information and both Parties participate actively in the Global Forum on Transparency and Exchange of Information for Tax Purposes;

WHEREAS the Government of the United Kingdom has issued a letter of entrustment to the Government of the British Virgin Islands to negotiate and conclude agreements for the exchange of information on tax matters;

NOW, THEREFORE, the Parties, desiring to enhance and facilitate the exchange of information with respect to taxes, agree as follows:

Article 1

Object and Scope of this Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, and collection of such taxes, the enforcement and recovery 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 covered by this Agreement are:
 - (a) in Canada, taxes on income, excise, and capital imposed or administered by the Government of Canada;
 - (b) in 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 or substantially similar taxes imposed 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 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) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
 - (b) “Canada”, used in a geographical sense, means:
 - (i) the land territory, internal waters and territorial sea, including the air space above these areas, of Canada;
 - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (UNCLOS); and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

- (c) “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 and sold, or readily purchased and 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;
- (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 the case of the Government of Canada, the Minister of National Revenue or the Minister’s authorised representative;
 - (ii) in the case of the Government of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing;
- (f) “Party” means the Government of Canada or the Government of the British Virgin Islands, as the context requires;
- (g) “criminal laws” means all criminal laws recognized as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means laws and administrative or judicial procedures enabling a Party to obtain and provide the information requested;
- (k) “national” means:
 - (i) in relation to Canada, any individual possessing the nationality or citizenship of Canada and any legal person, partnership or association deriving its status as such from the laws in force in Canada;
 - (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;
- (l) “person” includes an individual (“natural person”), a company, a trust, a partnership and any other body of persons;

- (m) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased and 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) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - (o) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
 - (p) “Requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;
 - (q) “Requesting Party” means the Party to this Agreement submitting a request for or having received information from the Requested Party;
 - (r) “tax” means any tax to which this Agreement applies.
2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information upon Request

1. The competent authority of a Requested Party shall provide, upon request in writing by the Requesting Party, information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested Party if it occurred in the territory of the Requested Party.
2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the 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 the domestic laws of the Requested Party, 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 specified in Article 1 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 legal and beneficial ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; and, 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 for 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 which relates to a period longer than the legally required time period for retaining the information in the jurisdiction of the Requested Party, which is a minimum of 5 years, and where that information is in fact no longer kept.

6. The competent authority of the Requesting 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 foreseeable relevance of the information to the administration and enforcement of the tax laws of the Requesting Party:
 - (a) the identity of the person under examination or investigation;
 - (b) the period for which the information is requested;
 - (c) a description of the nature and type of the information requested, and the form in which the Requesting Party would prefer to receive the information;
 - (d) the tax purposes for which the information is sought;
 - (e) the reasonable grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested 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 Party, and that, if the requested information were 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

- (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 acknowledge receipt of the request to the competent authority of the Requesting Party and shall use its best endeavours to forward the requested information to the Requesting Party within a reasonable time.

Article 6

Tax Examinations (or Investigations) Abroad

1. A Party may, to the extent permitted under its domestic laws, following reasonable notice from the other Party, allow representatives of the competent authority of the other Party to enter the territory of the Party in connection with a request to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the persons concerned.
2. At the request of the competent authority of one Party, the competent authority of the other Party may, in accordance with the domestic laws of the second-mentioned Party, permit representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the territory of the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or official authorised to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the 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 where:
 - (a) the request is not made in conformity with this Agreement; or
 - (b) the disclosure of the information requested would be contrary to the public policy (*ordre public*) of the Requested Party.

2. This Agreement shall not impose upon a Party any obligation to provide 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 barrister where such communications are:
 - (a) produced for the purposes of seeking or providing legal advice; or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The Requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the Requesting Party, the competent authority of the Requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
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 laws 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 provided or received by the competent authorities of the Parties 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 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 also be disclosed in public court proceedings or in judicial decisions.
2. This information may not be used for any purpose other than for the purposes stated in paragraph 1 without the express written consent of the competent authority of the Requested Party.

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

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

Administrative Costs

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties in accordance with a Memorandum of Understanding.

Article 11

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 Parties which relate to co-operation in tax matters.

Article 12

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the 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 Agreement.
4. The Parties may also agree on other forms of dispute resolution.

Article 13

Entry into Force

Each of the Parties shall notify the other of the completion of the internal procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of the notifications, and shall have effect:

- (a) with respect to criminal tax matters, from that date; and
- (b) with respect to all other matters covered in Article 1, for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

Article 14

Termination

1. This Agreement shall remain in force until terminated.
2. A Party may terminate this Agreement by serving a notice of termination in writing to the other Party. This Agreement shall terminate on the first day of the month following the expiration of a period of six months after the date of receipt of the notice of termination.
3. If this Agreement is terminated the 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.

IN WITNESS WHEREOF, the undersigned, being duly authorised in that behalf by the respective Parties, have signed this Agreement.

DONE in duplicate at London, this 21st day of May 2013, in the English and French languages, each version being equally authentic.

Gordon Campbell

For the Government of Canada

Orlando Smith

For the Government of the British Virgin Islands