

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE ISLE OF MAN
AND
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA
FOR
THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the Isle of Man and the Government of the People’s Republic of China (“the Contracting Parties”):

Acknowledging that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Desiring to provide a framework for cooperation and exchange of information in tax matters;

Agree to conclude the following Agreement which contains obligations on the Contracting Parties only:

ARTICLE 1
SCOPE OF AGREEMENT

1. 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. Such information shall include information that is foreseeably relevant to the determination, assessment, or collection of such taxes, the recovery and enforcement of tax claims, and the investigation or prosecution of tax matters.

2. 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

The 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 jurisdiction.

ARTICLE 3

TAXES COVERED

1. The taxes covered by this Agreement are:
 - (a) in the case of the People's Republic of China,
 - (i) Enterprise Income Tax;
 - (ii) Individual Income Tax;
 - (iii) Land Appreciation Tax;
 - (iv) Value Added Tax;
 - (v) Excise Tax; and
 - (vi) Business Tax;
 - (b) in the case of the Isle of Man, taxes on income or profit and VAT.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1.

3. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

4. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Contracting Parties in the form agreed upon by both Contracting Parties.

ARTICLE 4

DEFINITIONS

1. In this Agreement:
 - (a) "the People's Republic of China", when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with international law and its domestic law;
 - (b) "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
 - (c) "collective investment fund or scheme" means any pooled investment vehicle irrespective of legal form;
 - (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) "competent authority" means,
 - (i) in the case of the People's Republic of China, the State Administration of Taxation or its authorised representative; and
 - (ii) in the case of Isle of Man, the Assessor of Income Tax or his or her delegate;

- (f) "information" means any fact, statement, document or record in whatever form;
- (g) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (h) "national" means,
 - (i) in relation to the Isle of Man, any individual who is an ordinary resident of the Isle of Man;
 - (ii) in relation to the People's Republic of China, any individual possessing the nationality of the People's Republic of China;
 - (iii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting Party;
- (i) "person" includes an individual, a company or any other body or group of persons;
- (j) "public collective investment fund or scheme" means any collective investment fund or scheme, in which the purchase, sale or redemption of units, shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (k) "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; and for this purpose, the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company. The term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

- (l) "requested party" means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) "requesting party" means the party to this Agreement submitting a request for or having received information from the requested party;
- (n) "tax" means any tax covered by this Agreement.

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, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a 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 requested party needs such information for its own purposes or the conduct being investigated would constitute a tax offence under the laws of the requested party if it occurred in the jurisdiction of 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 the information, the requested party shall use all relevant information gathering measures necessary 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, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations, "Anstalten" and other persons, and within the constraints of Article 2 any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;
- (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
- (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. This Agreement does not create an obligation for a Party to obtain or provide 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.

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 in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) a statement of the information sought including its nature and the form in which the requesting party would prefer to receive the information;
- (d) the tax purpose for which the information is sought;
- (e) grounds for believing that the information requested is held 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;

- (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 competent authority of the requesting party. To ensure a prompt response, the competent authority of the requested party shall:

- (a) confirm the 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 any deficiencies in the request, if any, within 60 days of receipt of the request; and
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party to explain the reasons for its inability or the obstacles or its refusal.

ARTICLE 6
TAX EXAMINATIONS ABROAD

1. The requested party may, in accordance with its domestic laws, following receipt of notice of at least 14 working days from the requesting party, allow representatives of the competent authority of the requesting party to enter the territory of the requested party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authorities of the Contracting Parties shall agree on the time and place of the intended meeting with the persons concerned.

2. At the request of the competent authority of the requesting party, and in accordance with its domestic laws, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to be present at the tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting 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 party for the conduct of the examination. All decisions regarding the conduct of the 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. This Agreement shall not impose upon a Contracting Party any obligation to provide information subject to legal privilege as provided for under the domestic law of that Party or information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or 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 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.

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

2. The information may not be used for any purpose other than for the purposes stated in Article 1 and may not be disclosed to any other person or entity or authority 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

The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 10
IMPLEMENTATION LEGISLATION

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

ARTICLE 11

COSTS

1. Costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested party will be borne by the requested party when such costs are incurred for the purpose of responding to a request for information. Such ordinary costs would normally cover internal administration costs and any minor external costs.

2. All other costs that are not ordinary costs 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 by third parties for carrying out research;
 - (b) reasonable fees charged by third parties for copying and transporting documents;
 - (c) reasonable costs of engaging experts, interpreters, or translators;
 - (d) reasonable litigation costs of the requested party in relation to a specific request for information; and
 - (e) reasonable costs for obtaining depositions or testimony.

3. The Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US1000 to determine whether the requesting party will continue to pursue the request and bear the cost.

ARTICLE 12
LANGUAGE

Requests for assistance and responses thereto shall be in English.

ARTICLE 13
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 5, 6 and 11.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 14
ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the receipt of the latter notification. This Agreement shall have effect in respect of taxable periods beginning on or after the date of entry into force or, where there is no taxable period, all charges to tax arising on or after the date of signature.

ARTICLE 15
TERMINATION

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

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

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

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at *Douglas* in duplicate this *26th* day of *October* 2010, in two originals in the English and Chinese languages, both texts being equally authentic.

**For the Government of the
Isle of Man**

Jane Crowe

**For the Government of the
People's Republic of China**

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