

AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLE OF MAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Government of the Isle of Man and the Government of the United States of America, desiring to facilitate the exchange of information relating to taxes have agreed as follows:

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. Such information shall include 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. 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 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

The taxes which are the subject of this Agreement are:

- a) in the case of the United States of America, all federal taxes;
- b) in the case of the Isle of Man, taxes on income or profits;

provided that the types of tax covered may be modified by agreement between the Contracting Parties in the form of an exchange of letters.

Article 4

Definitions

- 1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term “Contracting Party” means the United States of America or the Isle of Man as the context requires;
 - b) the term “competent authority” means
 - (i) in the case of the United States of America, the Secretary of the Treasury or his delegate;

- (ii) in the case of the Isle of Man, the Chief Financial Officer of the Treasury or his delegate;
- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “tax” means any tax to which the Agreement applies;
- f) the term “applicant Party” means the Contracting Party requesting information;
- g) the term “requested Party” means the Contracting Party requested to provide information;
- h) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- i) the term “information” means any fact, statement or record in any form whatever;
- j) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- k) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- l) the term “items subject to legal privilege” means
 - (i) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (ii) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
 - (iii) items enclosed with or referred to in such communications and made –
 - (a) in connection with the giving of legal advice; or
 - (b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.

Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

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 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 territory 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 information, that 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 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 beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds, information on shares, units and other interests; and in the case of trusts, information on settlors, trustees and beneficiaries. This Agreement does not create an obligation on the requested Party to obtain or provide ownership information with respect to publicly traded interests in publicly traded companies or public collective investment funds unless such information can be obtained without giving rise to disproportionate difficulties.

5. 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 the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) the tax purpose for which the information is sought;
- d) reasonable 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 within the jurisdiction of the requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;

- f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

Article 6

Tax Examinations Abroad

1. The requested Party may, to the extent permitted under its domestic laws, allow 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 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 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 requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to provide items subject to legal privilege or 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.

3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy of the requested Party.

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

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

2. Information provided shall be disclosed only to persons or authorities (including judicial, administrative, and Congressional oversight authorities) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

3. Information provided to the applicant Party under this Agreement may not be disclosed to any third party.

Article 9

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 applicant 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 applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10

Implementation Legislation

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

Article 11

Mutual Agreement Procedure

Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

Article 12

Entry into Force

1. This Agreement shall enter into force when each Party has notified the other of the completion of its necessary internal procedures for entry into force.
2. Upon entry into force, the provisions of this Agreement shall have effect
 - a) from January 1, 2004 with respect to criminal tax matters relating to taxable periods beginning on or after January 1, 2004 or, where there is no taxable period, all charges to tax arising on or after January 1, 2004; and
 - b) from January 1, 2006 with respect to all other matters covered in Article 1 relating to taxable periods beginning on or after January 1, 2006 or, where there is no taxable period, all charges to tax arising on or after January 1, 2006.

Article 13

Termination

1. Either Contracting Party may terminate this Agreement by serving a notice of termination by letter to the competent authority of the other Contracting 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 Contracting Party.
3. A Contracting Party that terminates the Agreement 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 thereto, have signed this Agreement.

Done at Washington, in duplicate, this third day of October, 2002

FOR THE GOVERNMENT OF THE
ISLE OF MAN:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA: