

AGREEMENT BETWEEN JERSEY AND DENMARK FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

Whereas Jersey and Denmark (“the 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 Jersey under the terms of its Entrustment from the UK has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with Denmark;

Whereas Jersey on 22 February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

Whereas the parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed to conclude the following Agreement which contains obligations on the part of Denmark and Jersey only:

Article 1

Scope of the Agreement

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 covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, recovery and enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the criminal prosecution of tax matters in relation to such persons. A requested party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. 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
Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the parties:
 - (a) in the case of Jersey:
 - (i) the income tax;
 - (ii) the goods and services tax;
 - (b) in the case of Denmark:
 - (i) the income tax to the State (indkomstskatten til staten),
 - (ii) the income tax to the municipalities (den kommunale indkomstskat), and
 - (iii) value added tax (merværdiafgift).

2. This Agreement shall apply also 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 apply also 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 parties so agree. The competent authority of each party shall notify the other of substantial changes in laws which may affect the obligations of that party pursuant to this Agreement.

Article 3
Definitions

1. In this Agreement:
 - (a) “Jersey” means the Bailiwick of Jersey, including its territorial sea;
 - (b) “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;

- (c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) ”competent authority" means, in the case of Jersey the Treasury and Resources Minister or his authorised representative; in the case of Denmark, the Minister for Taxation or his authorized representative;
- (e) “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;
- (f) "criminal tax matters" means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal law of the requesting party;
- (g) "information gathering measures" means laws and administrative or judicial procedures enabling a requested party to obtain and provide the information requested;
- (h) "information" means any fact, statement, document or record in whatever form;
- (i) "person" means a natural person, a company or any other body or group of persons;
- (j) “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:
- (k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) “public collective investment scheme” means any scheme or fund, in which the purchase sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (m) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the parties;
- (n) "requested party" means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) "requesting party" means the party to this Agreement submitting a request for or having received information from the requested party;
- (p) "tax" means any tax covered by this Agreement;

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 laws 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 4

Exchange of Information Upon Request

1. The competent authority of the requested party shall provide upon request by the requesting party 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 tax purposes or the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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 at its own discretion 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 party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and 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 and other persons, 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 in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Provided that 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 schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing;

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested party or is in the possession of, or obtainable by, a person within the jurisdiction of the requested party;
- (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;
- (h) a statement that the request is in conformity with the laws 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;

- (i) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. 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 as soon as possible.

Article 5

Tax Examinations Abroad

1. With reasonable notice the requesting party may request that the requested party allow representatives of the competent authority of the requesting party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the written consent of the individuals or other 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 intended 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 permit representatives of the competent authority of the requesting party to attend a 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.

Article 6
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 public policy (“ordre public”).

2. This Agreement shall not impose upon a requested party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(4) shall not by reason of that fact alone be treated as such a secret or trade 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 or citizen of the requested party as compared with a national or citizen of the requesting party in the same circumstances.

Article 7
Confidentiality

1. All information provided and received by the competent authorities of the parties shall be kept confidential.
2. Such information 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.
3. Such 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.
4. The information provided to a requesting party under this Agreement may not be disclosed to any other jurisdiction.

Article 8
Costs

Unless the competent authorities of the parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested party, and extraordinary costs in providing assistance (including costs of engaging external advisers 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 if the costs of providing information with respect to a specific request are expected to be significant.

Article 9
Mutual Agreement Procedures

(1) Where difficulties or doubts arise between the 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.

(2) In addition to the agreements referred to in paragraph 1, the competent authorities of the parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.

(3) Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreements entered into will be in writing directly to the competent authority of the other party at such address as may be notified by one party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier mentioned competent authorities or their authorised representatives.

Article 10
Entry into force

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with. The Agreement shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of any tax year beginning on or after the first day of January of the year next following that in which this Agreement enters into force or, where there is no tax year, all charges to tax arising on or after that date.

Article 11
Termination

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

2. Either Party may terminate the Agreement by giving written notice of termination at least three months before the end of any calendar year. In such event, the Agreement shall cease to have effect on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the end of the three month period. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

In witness whereof the undersigned being duly authorised in that behalf by the respective parties, have signed the Agreement.

Done at Helsinki, this 28th day of October, 2008, in duplicate in the English language.

For the Government of Jersey

For the Government of Denmark