

**AGREEMENT ON EXCHANGE OF INFORMATION ON TAX MATTERS  
BETWEEN  
THE KINGDOM OF SPAIN  
AND  
THE COMMONWEALTH OF THE BAHAMAS**

The Kingdom of Spain and the Commonwealth of The Bahamas, 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 Contracting Parties shall provide assistance through exchanging 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**

1. The taxes which are the subject of this Agreement are:
  - a) in Spain:
    - the income tax on individuals (Impuesto sobre la Renta de las Personas Físicas);
    - the corporation tax (Impuesto sobre Sociedades);
    - the income tax on non-residents (Impuesto sobre la Renta de No Residentes);
    - the capital tax (Impuesto sobre el Patrimonio);
    - the inheritance and gift tax (Impuesto sobre Sucesiones y Donaciones);
    - the transfer tax (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados);
    - the value added tax (Impuesto sobre el Valor Añadido);
    - the excise tax (Impuestos Especiales); and
    - the local taxes on income and on capital (impuestos locales sobre la renta y el patrimonio).
  - b) in The Bahamas, taxes of every kind and description.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means Spain or The Bahamas, as the context requires;
  - b) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the

airspace, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

- c) the term “The Bahamas” means The Commonwealth of The Bahamas, encompassing the land, the territorial waters, and in accordance with international law and the laws of The Bahamas any area outside the territorial waters inclusive of the exclusive economic zone and the seabed and subsoil over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources;
- d) the term "competent authority" means:
  - i) in the case of Spain, the Minister of Economy and Finance or his authorised representative;
  - ii) in the case of The Bahamas, the Minister of Finance or his authorised representative;
- e) the term “collective investment scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment scheme” means any collective investment fund or scheme provided the units, shares or other interests in the scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the 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;
- f) the term “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;
- g) 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;
- h) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- i) the term "person" includes an individual, a company and any other body of persons;

- j) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - k) the term "tax" means any tax to which the Agreement applies;
  - l) the term "Applicant Party" means the Contracting Party requesting information;
  - m) the term "Requested Party" means the Contracting Party requested to provide information;
  - n) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - o) the term "information" means any fact, statement or record in any form whatever;
  - p) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
  - q) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party.
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 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, 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 an 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) (i) 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, 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 and beneficiaries;  
and  
(iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Notwithstanding the preceding paragraphs, this Agreement creates an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes unless such information cannot be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant Party shall formulate a request for information with the greatest possible detail and shall provide the following information in writing 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 taxpayer under examination or investigation;

- b) the identity of the person in respect of whom information is requested, if that person is not also the taxpayer in subparagraph (a) of this paragraph;
  - c) 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;
  - d) the period of time with respect to which the information is requested;
  - e) the tax purpose for which the information is sought including:
    - (i) the citation of the legal authority under the Applicant Party's tax law with respect to which the information is sought;
    - (ii) whether the matter is a criminal tax matter; and
    - (iii) the reasons for believing that the information requested is foreseeably relevant to the Applicant Party's tax administration and enforcement with respect to the person identified in subparagraph (a) of this paragraph;
  - f) the grounds for believing that the information requested is held in the Requested Party or is in the possession or control of 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 the requested information;
  - h) 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 its administrative practice and that the request is in conformity with this Agreement; and
  - i) 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.
6. 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 (and any subsequent corrected requests) in writing to the competent authority of the Applicant Party no later than fifteen working days after receipt.
- b) 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 any subsequent corrected requests).
- c) If the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of a properly constituted 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. The Applicant Party shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Parties shall informally and directly, through Mutual Agreement or otherwise, discuss the possibilities to achieve the purpose of the request and consult with each other the manner in which to achieve that objective.
- d) Provide the information no later than 6 months following the date of confirmation of receipt of the request, provided that where circumstances require, both competent authorities may agree on a longer deadline.

The time restrictions mentioned in this Article do not in any way impact on the validity and legality of information exchanged under this Agreement.

7. The competent authorities of the Contracting Parties may by mutual agreement settle the mode in which requests for information shall be submitted to the Requested Party.

## **Article 6**

### **Tax Examinations Abroad**

1. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
2. If the request is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other 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 first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the 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 supply information 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 (ordre public).
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. Any information received by a Contracting 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 Contracting Party concerned with



the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, all taxes covered by this Agreement. 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 (including a foreign Government) without the express written consent of the competent authority of the Requested Party.

2. Notwithstanding the foregoing, the information received by a Contracting Party may be used for other purposes when such information may be used for such other purposes under the laws of the Applicant Party and the competent authority of the Requested Party authorises such use.

## **Article 9**

### **Costs**

Unless the competent authorities of the Contracting Parties otherwise agree, costs incurred in providing assistance shall be borne by the Requested Party, unless they are agreed as extraordinary costs. At the request of either Contracting Party, the competent authorities shall consult each other when necessary with regard to this Article. 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 extraordinary.

## **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**

### **Language**

Requests for assistance and answers thereto shall be drawn up in English, or in Spanish and English.

## **Article 12**

### **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 endeavour to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this Agreement.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

## **Article 13**

### **Entry into Force**

1. The Government of The Bahamas and the Government of the Kingdom of Spain shall notify each other through diplomatic channels that the internal procedures required by each Contracting Party for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force after a period of three months following the date of receipt of the later of the notifications referred to in paragraph 1.
3. The provisions of this Agreement shall have effect:
  - with respect to criminal tax matters, for taxable periods beginning on or after 1<sup>st</sup> January 2005, or where there is no taxable period for all charges to tax arising on or after 1<sup>st</sup> January 2005;
  - with respect to all other matters described in Article 1, for all taxable periods beginning on or after the date of entry into force, or where there is no taxable period applicable, for all charges to tax arising on or after that date.
4. The Commonwealth of The Bahamas shall cease to be considered one of the territories referred to in paragraph 1 of the First Additional Provision of the Spanish Law to Avoid

Tax Evasion (Disposición Adicional primera de la Ley 36/2006 de Medidas para la Prevención del Fraude Fiscal) of 29 November 2006 on the date on which this Agreement shall have effect. For this purpose, the date on which this Agreement shall have effect is the date on which this Agreement enters into force.

5. The information exchanged under this Agreement is considered to be “effective exchange of information” in accordance with the internal legislation of the Contracting Parties.

## **Article 14**

### **Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of two years from the date of its entry into force.
2. In such event, the Agreement shall cease to have effect the first day of January in the calendar year next following that in which the notice is given.
3. Notwithstanding any termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE in duplicate in Nassau, Bahamas, on the 11th day of March, 2010, in the Spanish and English languages, all the texts being equally authentic.

For the Kingdom of Spain

For the Commonwealth of The Bahamas

Jesús Silva Fernández  
Ambassador of Spain

T. Brent Symonette  
Deputy Prime Minister  
and Minister of Foreign Affairs