

TAX INFORMATION EXCHANGE AGREEMENT OF 17TH JUNE, 2009

France

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

Article 1

Scope of the 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 and tax matters covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, or 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.
3. Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. 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 2

Jurisdiction

To enable the provisions of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national or citizen of a Contracting Party. A Requested Party is not obliged 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 the existing taxes imposed by law.
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, the existing taxes.
3. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties.
4. 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.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

- a) “France” means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
- b) “British Virgin Islands” means the territory of the Virgin Islands as referred to in Virgin Islands Constitution Order 2007;
- c) the term “competent authority” means
 - i) in the case of France, the Minister of Finance, or his authorised representative;
 - ii) in the case of the British Virgin Islands, the Financial Secretary, or a person or authority designated by him in writing;
- d) the term “person” includes a natural person, a company, any other legal person, or group of such persons;
- e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the term “tax” means any tax to which the Agreement applies;
- g) the term “Requesting Party” means the Party requesting information;
- h) the term “Requested Party” means the Party requested to provide information;
- i) the term “information gathering measures” means laws and administrative, judicial or regulatory procedures that enable a Contracting Party to obtain and provide the requested information;
- j) the term “information” means any fact, statement, document or record in any form whatsoever;
- k) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- l) 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.

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 in writing 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 such conduct occurred in the Requested Party. If the information received by the competent authority of the Requested Party is not sufficient to enable it to comply

with the request for information, it shall advise the competent authority of the Requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

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 Contracting 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 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 of this 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 legal ownership and beneficial ownership of companies, partnerships, trusts, foundations, collective investment funds, and other persons including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided that in the case of publicly traded companies or public collective investment schemes such information can be obtained without giving rise to disproportionate difficulties.

5. 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 specific evidence, information or other assistance sought and the form in which the Requesting Party wishes to receive the information from the Requested Party;
- d) the tax purposes for which the information is sought;
- e) reasonable grounds for believing that the information requested is held by the authorities of the Requested Party or is in the possession or control of a person within 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 requested information;
- g) a declaration that the request is in conformity with the law 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;
- h) 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 difficulties.

6. The competent authority of the Requested Party shall forward the requested information as promptly as possible to 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 within 60 days of receipt of the request;
- b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations or Investigations Abroad

1. The Requested Party may, to the extent permitted under its domestic laws, following notice of at least 12 days from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the prior written consent of the 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 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 allow representatives of the competent authority of the Requesting 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 granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about 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 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 Requesting 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; or where the Requesting Party has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulties.

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 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 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 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 8 Confidentiality

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 purposes specified in 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 without the express written consent of the competent authority of the Requested Party. Notwithstanding the foregoing, information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

Article 9 Administrative Costs

The Requesting Party shall reimburse the Requested Party for direct extraordinary costs of processing each request.

Article 10 Implementing 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 shall be drawn up in English when the Requesting Party is France and in French when the Requesting Party is the British Virgin Islands.

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 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 determine the procedures to be used under Articles 5 and 6.

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

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

Article 13
Entry Into Force

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. This Agreement shall enter into force when each Contracting Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, 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 taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 14
Termination

1. Either Contracting Party may terminate this Agreement by serving a notice. 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.

2. 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 will be dealt with in accordance with the terms of this Agreement.