

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

Whereas the Government of the French Republic and the Government of Principality of Liechtenstein (the Contracting Parties) recognise that the economic ties between the Contracting Parties call for further cooperation

Whereas the Contracting Parties wish to strengthen the ability of both Parties to enforce their respective tax laws;

Whereas the Contracting Parties wish to establish the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the Contracting Parties have agreed to conclude the following Agreement, which contains obligations on the part of the Contracting Parties only.

Article 1 Object and Scope

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 the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement and collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax matters in relation to such persons.

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 obliged to provide information which is neither held by its authorities nor in the possession of or in the control of persons who are within its territorial jurisdiction.

Article 3 Taxes Covered

The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.

This Agreement shall also apply to other taxes imposed after the date of its signature as may be agreed in an exchange of letters between the Contracting Parties.

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;

“Liechtenstein” means the Principality of Liechtenstein;

b) “competent authority” means:

- i) in the case of France, the Minister of Finance, or his authorised representative;
- ii) in the case of Liechtenstein, the Government or its authorised representative;

c) “person” includes a natural person, a dormant inheritance, a company, any other legal person and any other body of persons;

d) “company” means any body corporate, as well as entities and special asset endowments that are treated as a body corporate for tax purposes;

e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange, that fulfils the material requirements of Article 4 of the directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, 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;

f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power or of the statutory capital of the company;

g) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or 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;

h) “tax” means any tax to which the Agreement applies;

i) “Requesting Party” means the Contracting Party requesting information;

j) “Requested Party” means the Contracting Party requested to provide information;

k) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

l) “information” means any fact, statement, document or record in any form whatever;

m) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;

n) “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.

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, or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, have the meaning that it has at that time under the laws 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 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.

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 necessary to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not, at that time, 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 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 ownership and the beneficial ownership of companies, partnerships, Anstalten, collective investment schemes, and other persons;

(ii) in the case of a foundation, information on the founders, members of the foundation council and beneficiaries; and

(iii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries.

This Agreement does not create an obligation on the Contracting Parties to provide ownership information with respect to publicly traded companies or public collective investment funds or schemes if such information cannot be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Requesting Party shall formulate the request with the greatest detail possible by providing the following information to the competent authority of the Requested Party:

a) the identity of the person under examination or investigation;

b) the period of time with respect to which 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 matter under the Requesting Party's tax law with respect to which the information is sought;

e) grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the domestic tax laws of the Requesting Party with regard to the person specified in subparagraph a);

f) grounds for believing that the information requested is present in the Requested Party or is in the possession of, or is in the 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 or in control of the requested information;

h) a statement that the request conforms with the law and administrative practice of the Requesting Party;

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

6. To ensure a prompt response, 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 with the least reasonable delay.

Article 6

Tax Examinations Abroad

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice given in advance from the Requesting Party, allow representatives 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 intended meeting with the persons 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 acceded, 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 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; or
 - b) where the disclosure of the information requested would be contrary to public policy (*ordre public*).
2. This Agreement shall not impose upon a Contracting Party the obligation:
 - a) to provide information subject to legal privilege, or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process; or
 - b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this paragraph shall affect the obligations of a Contracting Party under Article 5, paragraph 4 of this Agreement.
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 the Requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the Requested Party under this Agreement.
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

1. All information provided and received by the competent authority of a Contracting Party shall be kept confidential.
2. Information provided to the competent authority of the Requesting Party may not be used for any purpose other than the purposes stated in Article 1 without the prior express written consent of the competent authority of the Requested Party.
3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) of the Contracting Parties concerned with the purposes specified in this Agreement and used by such persons or authorities only for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
4. Information provided to the Requesting Party under this Agreement must not be disclosed to any other State or territory not party to this Agreement.

Article 9 Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement. This includes availability of, access to and exchange of information.

Article 10 Mutual agreement procedure

1. Where any 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 these latter agreements, the competent authorities of the Contracting Parties may mutually agree on 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 purpose of reaching an agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution should this become necessary.

Article 11 Entry into Force

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, it shall have effect for all requests made, but only in respect of taxable periods beginning on or after 1 January 2010 or, where there is no taxable period, all charges to tax arising on or after that date.

Article 12
Termination

1. Either Contracting Party may terminate this Agreement by serving a notice of termination.
2. 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 will be dealt with in accordance with the terms of this Agreement.

In witness whereof the undersigned, being duly authorised by the respective Contracting Parties, have signed this Agreement.

Done at Vaduz, on 22. September 2009, in duplicate, each in French and German languages, each text being equally authentic.

For the Government of the French Republic

For the Government of the Principality
of Liechtenstein