

# **Act (2009:1114) on agreements between Sweden and the British Virgin Islands for exchange of information relating to taxes**

**SFS** : 2009:1114 **Ministry / Authority** : Ministry of Finance S3 **Issued** : 2009-11-19 **Modified** SFS 2010:324 **Printed version** : [pdf, without changes \(Lagrummet\)](#) **Change Record** : [SFSR \(Lagrummet\)](#) **Source** : Cabinet Office / Lagrummet

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The agreement on the exchange of information relating to taxes that the Government of Sweden and the British Virgin Islands government signed 18 May 2009 shall apply as law in this country. The contract is written in English and in an appendix to this Act.

## **Transitional provisions**

2009:1114

1. This Act comes into force on the day the Government.

2nd This law is effective for tax years beginning January 1 of the year following the year in which the Act comes into force or later or, if there is no tax, the tax levied on January 1 of the year following the year in which the Act enters into force. In matters that constitute criminal tax matters under the contract law apply from the effective date.

## **Annex**

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Government of the Kingdom of Sweden and the Government of the British Virgin Islands (“the Contracting Parties”) recognise the need for cooperation and the exchange of information in criminal and civil tax matters;

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

## **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 or enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. 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.

2. This Agreement shall not affect the application in the respective Contracting Parties of the rules on mutual legal assistance in criminal matters.

## **Article 2**

### **Jurisdiction**

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

## **Article 3**

### Taxes covered

1. The taxes covered by this Agreement are:
- (a) in the case of the British Virgin Islands,
    - (i) the income tax;
    - (ii) the payroll tax; and

- (iii) the property tax
- (b) in the case of Sweden,
  - (I) the national income tax (state income tax);
  - (ii) the withholding tax on dividends (kuponngskatten);
  - (Iii) the income tax on non-residents (the income tax on non-residents);
  - (Iv) the income tax on non-resident artistes and athletes (the income tax on non-resident artists and others);
  - (V) the municipal income tax (the municipal income tax);
  - (Vi) the yield tax on pension funds (income tax on pension funds);
  - (Vii) the value added tax (VAT);
  - (Viii) the tax on advertisements and advertising (tax on advertising and promotion);
  - (Ix) the premium tax on group life insurance, etc. (the special premium tax for group life insurance, etc.);
  - (x) the lottery tax (lotteriskatten);
  - (xi) the tobacco excise duty (tobaksskatten);
  - (xii) the alcohol excise duty (alkoholskatten);
  - (xiii) the premium tax on insurance against civil liability in respect of the use of motor vehicles (skatten på trafikförsäkringspremie m.m.); and
  - (xiv) the energy tax (skatten på energi).

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1 of this Article. 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. In this Agreement unless the context otherwise requires –

- (a) “British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (b) “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- (c) “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means
  - (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;

(ii) in the case of Sweden, the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Agreement;

(f) “Contracting Party” means the British Virgin Islands or Sweden as the context requires;

(g) “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 laws;

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

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

(j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a Requested Party to obtain and provide the requested information;

(k) “national” means

(i) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;

(ii) in relation to Sweden any individual possessing the nationality of Sweden, and any legal person, partnership or association deriving its status as such from the laws in force in Sweden;

(l) “person” includes an individual, a company and any other body or group of persons;

(m) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

(n) “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

(o) “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;

(p) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

(q) “Requested Party” means the Contracting Party to this Agreement which is requested to provide or has provided information in response to a request;

(r) “Requesting Party” means the Contracting Party to this Agreement submitting a request for or having received information from the Requested Party;

(s) “tax” means any tax covered by this Agreement.

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 by the Requesting Party 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 it occurred in the territory of 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, in accordance with the terms provided in paragraph 7 (a), 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 possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested 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 authority, for the purposes of this Agreement, has 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) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- (a) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
- (b) information relating to a period more than six years prior to the tax period under consideration;
- (c) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. 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) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Party;
- (e) grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to 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 information requested;
- (g) a declaration that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information were 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;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response:

- (a) the competent authority of the Requested Party shall 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; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if

obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, 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, and following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the 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 persons concerned.
2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit 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 of this Article 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 in accordance with its domestic laws.

## **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 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 difficulties; or
  - (c) where the disclosure of the information requested would be contrary to public policy (*ordre public*).
2. The provisions of this Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in

paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. (a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:

(i) produced for the purposes of seeking or providing legal advice, or

(ii) produced for the purposes of use in existing or contemplated legal proceedings.

(b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. 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.

6. 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 resident or national of the Requested Party as compared with a resident or national of the Requesting 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 and 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 or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. 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.

3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

## **Article 9**

### **Safeguards**



Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. However, these rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

## **Article 10**

### Administrative costs

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the Requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the Requesting Party. Extraordinary costs include, but are not limited to, the following:
  - (a) reasonable fees charged by third parties for carrying out research;
  - (b) reasonable fees charged by third parties for copying documents;
  - (c) reasonable costs of engaging experts, interpreters, or translators;
  - (d) reasonable costs of conveying documents to the Requesting Party;
  - (e) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
  - (f) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the Requesting Party will continue to pursue the request and bear the cost.

## **Article 11**

### No prejudicial or restrictive measures

1. So long as this Agreement is in force and effective, it is the intention of the Contracting Parties not to apply or introduce prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party. However, in the event that a Contracting Party has reason to believe that the other Contracting Party has introduced such prejudicial or restrictive measures, both Contracting Parties shall immediately initiate proceedings to resolve the matter.
2. A prejudicial or restrictive measure based on harmful tax practices means a measure applied by one Contracting Party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of the term “prejudicial or restrictive measure”, the term includes the denial of a deduction, credit or exemption, the imposition of a tax,

charge or levy, or special reporting requirements. Such measures include any measure which relates, directly or indirectly, to taxation matters. However, they do not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

## **Article 12**

### **Implementing legislation**

The Contracting Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

## **Article 13**

### **Language**

Requests for assistance and responses thereto shall be drawn up in English.

## **Article 14**

### **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 efforts referred to in paragraph 1 of this Article, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching agreement under this Article.

## **Article 15**

### **Entry into force**

1. Each of the Contracting Parties shall notify to the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
  - (a) for criminal tax matters, from the date of entry into force; and
  - (b) for all other matters covered in Article 1, on taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 16**

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party.
2. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination to the other Contracting Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six 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.

In witness whereof the undersigned being duly authorised in that behalf by the respective parties, have signed this Agreement.  
Done at Copenhagen, this 18th day of May 2009, in duplicate in the English language.

**For the Government of the Kingdom of Sweden**

**Lars Grundberg**

**For the Government of the British Virgin Islands**

**Danica Penn**

(Translation)

**AGREEMENT BETWEEN THE KINGDOM OF SWEDEN AND BRITISH VIRGIN ISLANDS GOVERNMENT ON THE EXCHANGE OF INFORMATION CONCERNING TAXES**

When the Kingdom of Sweden and the British Virgin Islands Government ("the Contracting Parties") recognize the need for cooperation and exchange of information in tax matters and other tax matters, -----  
the Contracting Parties have entered into the following agreement which contains obligations for the contracting parties.

**Article 1**

This Agreement applies to

1. The Contracting Parties' competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the Parties' domestic laws concerning taxes and tax matters covered

by this Agreement, including information that is foreseeably relevant for determination, assessment, verification and recovery and the recovery and enforcement of tax claims, in respect of persons who are subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be kept confidential in the manner provided in Article 8.

2nd This Agreement shall not affect the applicability of the parties of the provisions on mutual legal assistance in criminal matters.

## **Article 2**

### **Jurisdiction**

To ensure proper implementation of this Agreement, the information provided in accordance with this Agreement by the competent authority of the Requested Party:

- a) whether the person the information relates is a resident or national of a Contracting Party or if the person holding the information is resident or national of a Contracting Party, and
- b) provided that the information available to the territory or possession or control of a person subject to the jurisdiction of the requested Party.

## **Article 3**

Taxes covered by the Agreement

1. The taxes covered by this Agreement are:

- a) in the case of the British Virgin Islands,
  - 1) the income tax,
  - 2) the tax on wage payments, and
  - 3) property tax
- b) in the case of Sweden,
  - 1) the national income,
  - 2) withholding tax,
  - 3) the income tax on non-residents,
  - 4) the income tax on non-resident artists and others,
  - 5) the tax,
  - 6) returns the tax on Pension funds,
  - 7) VAT,
  - 8) tax on advertisements,
  - 9) the special premium tax for group life insurance, etc.,
  - 10) lottery tax,
  - 11) tobacco tax,

- 12), alcohol tax,
- 13) tax on insurance premium traffic, etc., and
- 14) tax on energy.

2nd This Agreement shall also apply to any identical or substantially similar taxes imposed after the signing of the agreement taken out in one of the parties in addition to or instead of any of those listed in paragraph 1 of this article listed the taxes. The Contracting Parties' competent authorities shall notify each other about relevant changes regarding the tax legislation and the procedures to obtain information covered by this Agreement.

#### **Article 4**

##### Definitions

1. Unless the context otherwise requires, in this Agreement the following terms as defined below:

- a) "British Virgin Islands" means the Virgin Islands 'territory as it appears in the Virgin Islands' Constitution Order 2007, "
- b) "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, means the territory of Sweden, the Swedish territorial sea and other maritime areas over which Sweden , in accordance with international law exercises sovereign rights or jurisdiction,
- c) "collective investment fund or collective investment scheme" means any pooled investment vehicle, irrespective of legal form,
- d) "company" means any body corporate or any entity that is treated as a body corporate ,
- e) "competent authority" means
  - 1) in the case of the British Virgin Islands, the finance minister or person or authority in writing ordained by him,
  - 2) in the case of Sweden, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purposes of this Agreement,
- f) " Contracting Party "means the British Virgin Islands or Sweden as the context
- g) "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;
- h) "criminal tax matters" means tax matters involving intentional conduct which is under the criminal laws of the requesting Party may be subject to prosecution,
- i) "information" means any fact, statement, document or record in whatever form,
- j) "measures to obtain information" means laws, regulations and administrative or judicial procedures which allows for a requested Party to obtain and provide information requested,
- k) the term "national" means

1) as regards the British Virgin Islands, person belonging to the British Virgin Islands by virtue of the Virgin Islands' Constitution Order 2007 (Statutory Instrument 2007 No.. 1678) "or that has a certificate of residence in the British Virgin Islands with the support of" the Immigration and Passport Ordinance (Cap .130) "and legal person, partnership, association or other entity formed under the laws of the British Virgin Islands,

2) as regards Sweden, the natural person who holds Swedish citizenship or legal person, partnership or association deriving its status as current Swedish law,

l) "person" includes an individual, a company and any other body of persons,

m) "principal class of shares" means the or classes of shares representing a majority of the voting power and value of the company,

n) "public collective investment fund or public collective investment scheme" means any collective investment fund or collective investment scheme in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors,

o) "company whose shares are publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be bought or sold by the public. Shares may 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,

p) "recognized stock exchange" means any stock exchange on which the Contracting Parties' competent authorities have agreed,

q) " requested Party "means the Contracting Party under this Agreement at the request requested to provide or has provided information,

r) "requesting Party" means the Contracting Party under this Agreement requesting or having received information from the requested Party,

s) 'tax "means any tax covered by this Agreement.

2nd Where a Contracting Party applying this Agreement at any time shall, unless the context otherwise requires, any term not defined therein shall have the meaning which it has at that time under that Party's law and the meaning which it has 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 specified in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the law of the requested Party if it occurred in the requested Party. If the information received by the competent authority of the requested Party is not sufficient to accommodate a request for information, that competent authority, in

accordance with the provisions of paragraph 7 a), inform the competent authority of the Applicant Party and specify additional requirements for granting the request.

2nd If the information is available to the competent authority of the requested Party is not sufficient to accommodate a request for information, the requested Party shall take all appropriate measures to obtain and provide the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

third If the competent authority of the requesting Party in particular requests, the competent authority of the requested Party - to the extent that this is permitted under its domestic laws - provide information under this Article in the form of depositions of witnesses and authenticated copies of documents.

4 . Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity,
- b) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including - with the limitations imposed by 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 council and as well as similar information regarding entities that are neither trusts or foundations.

5th Notwithstanding the preceding paragraphs does not mean this Agreement, any obligation on the Contracting Parties to obtain or provide:

- a) information regarding the ownership of companies whose shares are publicly traded, the public collective investment fund or public collective investment schemes unless such information can be obtained without giving rise to disproportionate difficulties,
- b) the information is time-more than six years before the tax period under assessment,
- c) the information that a person other than the taxpayer owns or controls and which do not directly relate to the taxpayer.

6. Upon request for information under this Agreement, the competent authority of the Requesting Party shall provide the following information to the competent authority of the other party, to demonstrate the relevance of the information requested:

- a) the identity of the person under examination or investigation,
- b) the period for which information is requested,
- c) the requested information the characteristics of such, including a description of the specific proof required and the form in which the requesting Party would prefer to receive be provided,
- d) the tax purpose for which the information is sought and why they are likely to be relevant to the application or enforcement of the requesting Party's domestic laws,
- e) the reasons for believing that the information requested is available in the requested

Party or held or controlled by the person subject to the jurisdiction of the requested Party,

f) to the extent known, the name and address of the person believed to be in possession or control of the information requested,

g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party and the competent authority of the requesting Party - if the requested information was within the jurisdiction of the party - could obtain the information under law or statutory administrative practices of the requesting Party,

h) a statement that the applicant Party has pursued every effort to obtain the information at its disposal in its own territory, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forthwith provide the requested information to the competent authority of the requesting Party. To ensure a prompt response:

a) the competent authority of the requested Party shall acknowledge in writing receipt of the request to the competent authority of the requesting Party, and within 60 days of receipt, notify the competent authority of the Requesting Party of any deficiencies in the request, and

b) if the competent authority of the requested Party has been unable to obtain and provide the requested information within 90 days after the request was received, or if there is an inability to furnish the information, or if it refuses to furnish the information, it shall immediately notify in writing the competent authority of the applicant Party, providing reasons for not having been able to obtain and provide information or enter the existing obstacles or the reasons for its refusal.

## **Article 6**

### Tax examinations abroad

1. The Requested Party may, to the extent that this is permitted under its domestic laws, and after reasonable notice from the Requesting Party, allow representatives of the competent authority of the requesting Party to the requested Party in connection with a request for hearing persons and examine records with the written consent of the persons concerned. The competent authority of the requesting Party shall inform the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2nd At the request of the competent authority of the requesting Party, the competent authority of the requested Party in accordance with its domestic laws to allow representatives of the competent authority of the requesting Party to the extent deemed appropriate a tax examination in the requested Party.

3rd If the request referred to in paragraph 2 of this Article, the competent authority of the requested Party conducting the examination as soon as possible, notify the



competent authority of the Requesting Party of the time and place of the examination, the authority or person authorized to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the investigation. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

## **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 requesting Party has not pursued all means to obtain the information it has at its disposal in its own territory, except where recourse to such means would give rise to disproportionate difficulties, or
- c) where the disclosure of the information requested would be contrary to public policy (ordre public).

second The provisions of this Agreement shall not impose on a Contracting Party to supply information which would disclose any trade, business, industrial or professional secret or commercial secret or trade process. Information shall not be considered as such a secret or trade process merely because they represent the information provided for in Article 5 paragraph 4.

third a) The provisions of this Agreement shall not impose on a Contracting Party to obtain or provide information, which would reveal confidential communications between a client and an attorney or other legal representative where such communications are:

- 1) produced for the purposes of seeking or providing legal advice or
  - 2) produced for the purposes of use in existing or contemplated legal proceedings.
- b) Information held in order to promote an offense not covered by professional secrecy in relation to legal advice and nothing in this Article shall prevent a lawyer or solicitor from disclosing a client's name and address which does not involve a breach of confidentiality .

4th A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

5th The requested Party shall not be required to obtain and provide information that the competent authority of the requesting Party - if the requested information was within the jurisdiction of the party - can not obtain under its laws or customary administrative practice.

6. 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 requesting Party's tax laws, or any requirement connected therewith, which under the same conditions discriminate against a citizen or resident of the requested Party in relation to a national or resident of the requesting Party.

## **Article 8**

### **Privacy**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by them or authorities only for such purposes, including the determination of any appeal or to supervise those activities. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

2nd The information may not be disclosed to any other person or authority without the express written consent of the competent authority of the requested Party.

third Information provided to a requesting Party shall not be disclosed to any other jurisdiction.

## **Article 9**

### **Rights**

Nothing in this Agreement affects the rights secured to persons by the Requested Party's laws or administrative practice. These rights may not be applied by the Requested Party in a manner that unduly prevent or delay effective exchange of information.

## **Article 10**

### **Administrative costs**

1. Customary costs incurred in the course of responding to a request for information shall be borne by the requested Party. Such ordinary costs normally cover internal administration costs and external costs.

2nd All other expenses are not ordinary costs are considered extraordinary costs and will be borne by the requesting Party. Extraordinary expenses include, but are not limited to, the following:

- a) reasonable fees charged by third parties for the performance of investigative work,
- b) reasonable fees charged by third parties for copy work,
- c) the reasonable costs of engaging experts, interpreters or translators,
- d) reasonable costs of conveying documents to the Requesting Party,
- e) reasonable litigation costs that the requested Party incurred in connection with a specific request for information, and
- f) the reasonable costs of collecting written testimonies and testimonies.

third The competent authorities of the Contracting Parties shall consult each other in individual cases where it is probable that the extraordinary costs will exceed U.S. \$

500, in order to determine whether the applicant Party wishes to pursue the request and bear the cost of this.

## **Article 11**

No targeted countermeasures

1. As long as this Agreement is in force and apply it the contracting parties' intention not to apply or introduce restrictive measures based on harmful tax competition and targeting to residents or nationals of either of the contracting parties. If a Contracting Party, however, has reason to believe that the other Contracting Party has introduced such targeted countermeasures, the contracting parties shall enter into immediate negotiations to resolve the issue.

2nd A targeted countermeasures designed to combat harmful tax competition refers to a measure applied by one Contracting Party and targeting residents or nationals of the other Contracting Party and which is justified by that other Contracting Party do not contribute to the effective exchange of information or that party shortcomings in transparency with respect to its laws, regulations or administrative practices. The same applies if that other party does not levy any tax or only a token tax is imposed and this occurs while any of the criteria mentioned above is present.

third Without limiting the generality of the term "targeted countermeasures" includes the denial of a deduction, credit or exemption, to levy a tax, charge or levy, or special reporting requirements. Such action includes any action that directly or indirectly affect taxation. They did not include the general measures applied by either Contracting Party with respect to, among others, members of the OECD.

## **Article 12**

### **Implementation legislation**

The Contracting Parties shall (unless it has not already done so) enact any legislation necessary to comply with and give effect to the terms of this Agreement.

## **Article 13**

### **Language**

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

## **Article 14**

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

endeavor to resolve the matter by mutual agreement.

2nd In addition to what is stated in paragraph 1 of this Article, the Parties' competent authorities mutually agree on the procedures for the application of Articles 5, 6 and 10.

third For the purposes of this Article, the Parties' competent authorities communicate directly with each other to reach an agreement.

## **Article 15**

### Entry into force

1. Each Party shall give written notice to the other party when the actions taken by its law required that this Agreement enters into force.

2nd This Agreement shall enter into force on the thirtieth day after the date of the later of these notifications are received and applied:

a) for criminal tax matters from the date of entry into force, and

b) in all other matters covered in Article 1, for taxable years beginning January 1 of the year next following the date of entry into force of the Agreement or later, or - where no taxable exists - for tax arising on 1 January of the year next following the date of entry into force of the Agreement or later.

## **Article 16**

### Termination

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

2nd Each Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination to the other Contracting Party. In such event, the Agreement shall cease to have effect on the first day of the month next following the expiration of the six month period following the date on which notice of cancellation was received by the other Contracting Party.

third In the event of termination of this Agreement, the Contracting Parties 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 authorized by the respective parties, have signed this Agreement.

DONE at Copenhagen on 18 May 2009 in duplicate in the English language.

**For the Government of Sweden**

**Lars Grundberg**

**British Virgin Islands government**

Danica Penn

