

P.U. (A) 367

Signed: 23 April 2012

Effective Date: 28 December 2012

**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF BERMUDA (AS AUTHORISED BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND) FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

**THE GOVERNMENT OF MALAYSIA**

**AND**

**THE GOVERNMENT OF BERMUDA**

DESIRING to facilitate the exchange of information relating to tax matters have agreed as follows:

Article 1

**OBJECT AND SCOPE OF THE AGREEMENT**

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 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 7. 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 Malaysia, income tax;
  - (b) in Bermuda, direct taxes of every kind.
  
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. 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, the terms:
  - (a) “Contracting Party” means Malaysia or Bermuda as the context requires;
  - (b) “competent authority” means:
    - (i) in the case of Malaysia, the Minister of Finance or his authorized representative;
    - (ii) in the case of Bermuda, the Minister of Finance or his authorized representative;
    - (iii) “person” includes an individual, a company and any other body of persons;
    - (iv) “company” means any body corporate or any entity that is treated as a
    - (v) body corporate for tax purposes;
  - (e) “publicly traded company” means any company whose principal class of shares is listed on a recognized 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;

- (f) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (g) “recognised stock exchange” means:
  - (i) in the case of Malaysia, any stock exchange approved under section 8 of the Capital Market and Services Act 2007;
  - (ii) in the case of Bermuda, any stock exchange approved under the Bermuda Stock Exchange Act 1992 (as amended); and
  - (iii) any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (h) “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;
- (i) “tax” means any tax to which the Agreement applies;
- (j) “applicant Party” means the Contracting Party requesting information;
- (k) “requested Party” means the Contracting Party requested to provide information;
- (l) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (m) “information” means any fact, statement or record in any form whatever.

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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 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) information regarding the 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; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide 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.

5. The competent authority of the applicant Party shall provide the following information 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 person under examination or investigation;

- (b) 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;
- (c) the tax purpose for which the information is sought;
- (d) 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;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) 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 administrative practice that it is in conformity with this Agreement;
- (g) 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 in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the 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 applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## Article 6

### **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 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 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 other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

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

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 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 7

### **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 assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the 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 shall not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## Article 8

### **ADMINISTRATIVE COSTS**

1. Costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested party will be borne by the requested party when such costs are incurred for the purpose of responding to a request for information. Such ordinary costs would normally cover internal administration costs.

2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the requesting party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) costs charged by third parties for copying documents;
- (b) costs of engaging experts, interpreters, or translators;
- (c) litigation costs of the requested party in relation to a specific request for information;
- (d) costs for obtaining depositions or testimony; and
- (e) other costs incurred that are “reasonable”

3. The Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed US\$1000 to determine whether the requesting party will continue to pursue the request and bear the cost.

## Article 9

### **IMPLEMENTATION LEGISLATION**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 10

**LANGUAGE**

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

Article 11

**MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour 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 agree on the procedures to be used under Article 5.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 12

**ENTRY INTO FORCE**

The Contracting Parties shall notify each other of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications, and its provisions shall have effect for taxable periods beginning on or after that date.

Article 13

**TERMINATION**

1. This Agreement shall remain in effect indefinitely, but either Contracting Party may terminate the Agreement, through diplomatic channel, by giving to the other Contracting Party written notice of termination.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. Where a Contracting Party terminates this Agreement, both Contracting Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

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

DONE in duplicate at **London** this **23<sup>rd</sup> day of April 2012**, each in the Malay and the English language, all texts being equally authentic. In case of any divergence in the interpretation and the application of this Agreement, the English text shall prevail.

**FOR THE GOVERNMENT OF  
MALAYSIA**

**FOR THE GOVERNMENT OF  
BERMUDA**