



TREATY SERIES 2011
Nº 16

**Agreement between the Government of Ireland and the
Government of Bermuda for the Exchange of Information
Relating to Taxes**

Done at Dublin on 28 July 2009

Notifications of the completion of the procedures necessary for the entry into force of
the Agreement exchanged on 7 October 2009
and 5 May 2010

Entered into force on 11 May 2010

Presented to Dáil Éireann by the Minister for Foreign Affairs

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF BERMUDA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Government of Ireland and the Government of Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) (“the contracting parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the contracting parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the contracting parties are competent to negotiate and conclude a tax information exchange agreement;

Whereas Bermuda on 15 May 2000 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently have participated actively in the OECD Global Forum on Taxation;

Whereas the contracting parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Whereas in entering into the Agreement, the intention of each contracting party is not to propose the application of prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other contracting party so long as the Agreement is in force and the contracting parties are meeting their obligations under the Agreement;

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 *Scope of Agreement*

The competent authorities of the contracting parties shall provide assistance through exchange of information that is relevant to the administration and enforcement of the domestic laws of the contracting parties concerning the taxes and the tax matters covered by this Agreement, including information that is 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.

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, national or citizen of a party, or whether the person by whom the information is held is a resident, national or citizen of a 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 Ireland:

- (i) the income tax;
- (ii) income levy;
- (iii) corporation tax;
- (iv) capital gains tax;
- (v) capital acquisitions tax;
- (vi) stamp duty;
- (vii) value added tax;

(b) in the case of Bermuda:

direct taxes of every kind and description.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in sub-paragraph 1. 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-

- (a) "Ireland" means and includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;
- (b) "Bermuda" means the Islands of Bermuda
- (c) "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 for tax purposes;
- (e) “competent authority” means, in the case of Ireland, the Revenue Commissioners or their authorised representative and, in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;
- (f) “contracting party” means Ireland or Bermuda 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 contracting 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 contracting party to obtain and provide the information requested;
- (k) “person” includes a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (l) “public collective investment scheme” means any collective scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (m) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (n) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (o) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (p) “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (q) “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;
- (r) “tax” means any tax covered by this Agreement

2. The term “relevant” wherever used in the Agreement with respect to information, shall be interpreted in a manner that ensures that information will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

3. 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 a 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 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, trusts 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.

5. Notwithstanding the preceding paragraphs, 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 schemes unless such information can be obtained without giving rise to disproportionate difficulties.

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 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 for believing that the information requested is relevant to the administration or enforcement of the domestic laws of the requesting party;
- (e) reasonable 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 statement 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 territory 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, 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; 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, including 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 to explain the reasons for its inability or the obstacles or its refusal.

Article 6
Tax Examinations (or Investigations) Abroad

1. The requested party may, to the extent permitted under its domestic laws, following reasonable notice of not less than fourteen days 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 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 in accordance with its domestic law 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 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 law.

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;
 - (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 difficulty; or
 - (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested party.
2. 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. This Agreement shall not impose on a contracting party an obligation to provide information held that is subject to 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 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 authorities of the contracting parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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 used for any purpose other than for the purposes stated in Article 1 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. 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 10 *Administrative Costs*

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise necessary to comply with the request) shall be borne by the requesting Party. The competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the contracting parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the contracting parties may mutually 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 on other forms of dispute resolution.

Article 12
Entry Into Force

Each of the contracting parties shall notify to the other in writing the completion of the procedures required by its law for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later notification, and shall thereupon have effect:

- (a) with respect to criminal tax matters on that date; and
- (b) with respect to all other matters covered in Article 1, for taxable periods beginning on or after that date, or where there is no taxable period, for all charges to tax arising on or after that date.

Article 13
Termination

1. This Agreement shall remain in force until terminated by either contracting party.
2. Either contracting party may terminate this Agreement by giving notice of termination in writing. 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. 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 shall be dealt with in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised in that behalf by the respective contracting parties, have signed this Agreement.

DONE at Dublin in duplicate this 28th day of July, 2009 both versions being equally authentic.

**FOR THE GOVERNMENT
OF IRELAND**

Brian Lenihan, T.D.

**FOR THE GOVERNMENT
OF BERMUDA**

Paula A. Cox, JP, M.P.