

AGREEMENT

BETWEEN THE GOVERNMENT OF THE COMMONWEALTH

OF THE BAHAMAS

AND

THE GOVERNMENT OF THE REPUBLIC OF KOREA

ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of the Commonwealth of The Bahamas and the Government of the Republic of Korea, desiring to facilitate the exchange of information with respect to taxes, 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 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays 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 existing taxes of every kind and description imposed on behalf of either Contracting Party.
2. This Agreement shall also apply to any identical taxes or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. 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.
3. This Agreement shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Contracting Party.

Article 4
Definitions

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

- a) the term "The Bahamas" means the Commonwealth of The Bahamas, encompassing the land, the territorial waters, and in accordance with international law and the laws of The Bahamas any area outside the territorial waters inclusive of the exclusive economic zone and the seabed and subsoil over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources;
- b) the term "Korea" means the Republic of Korea; when used in a geographical sense, it means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;
- c) the term "Contracting Party" means The Bahamas or Korea, as the context requires;
- d) the term "competent authority" means:
 - i) in the case of The Bahamas, the Minister of Finance or the Minister's duly authorised delegate;
 - ii) in the case of Korea, the Minister of Strategy and Finance or his authorized representative;
- e) the term "person" includes an individual, a company and any other body of persons;
- f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) 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;
- h) 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;

- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) 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;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “national” means:
 - i) in relation to The Bahamas, any individual possessing the nationality of The Bahamas; or any legal person, partnership, association or other entity deriving its status as such from the laws in force in The Bahamas; and
 - ii) in relation to Korea, any individual possessing the nationality of Korea; or any legal person, partnership or association deriving its status as such from the laws in force in Korea;
- q) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party; and
- r) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that 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 formulate a request for information under this Agreement with the greatest possible detail, and shall provide the following information to the competent authority of the requested Party, to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the taxpayer under examination or investigation;
- b) the identity of the person in respect of whom information is requested, if that person is not also the taxpayer in subparagraph (a) of this paragraph;

- c) 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;
- d) the tax period with respect to which the information is requested;
- e) the tax purpose for which the information is sought, including:
 - i) the provision of the legal authority under the applicant Party's tax law or other law with respect to which the information is sought;
 - ii) whether the matter is a criminal tax matter; and
 - iii) the reasons for believing that the information requested is foreseeably relevant to the applicant Party's tax administration and enforcement with respect to the person identified in subparagraph (a) of this paragraph;
- f) 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;
- g) to the extent known, the name and address of any person believed to be in possession of the requested information;
- h) 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 and that it is in conformity with this Agreement;
- i) 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 acknowledge receipt of the request to the competent authority of the requesting Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

Article 6
Tax Examinations Abroad

1. A Contracting Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7
Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the 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 subject to legal privilege, or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in 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 requested Party may decline a request for information if the disclosure of the information would be contrary to national security or public policy (ordre public).

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

5. The requested Party may decline a request for information if the information is requested by the 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 8

Confidentiality

1. 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 may 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.

2. Where information provided pursuant to this Agreement for a criminal tax purpose is, subsequently, to be used for a non-criminal tax purpose (and vice versa), the competent authority which supplied the information shall be notified of this change in use, if not before, then within a reasonable time of the change in use occurring.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

Article 10

Implementation 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 11
Language

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

Article 12
Other international agreements or arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

Article 13
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, including by agreeing on other forms of dispute resolution.
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 Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 14
Entry into Force

1. The Governments of the Contracting States shall notify each other of the completion of procedure required by their respective laws for the bringing into force of this Agreement as soon as possible.
2. This Agreement shall enter into force on the date of the latter of the notifications referred to in paragraph 1 of this Article.

3. This Agreement shall thereupon have effect:

- a) for criminal tax matters for all taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004; and
- b) with respect to all other matters covered in Article 1, for taxable periods beginning on or after the date of entry into force of this agreement, or where there is no taxable period, for all charges to tax arising on or after the date on which this Agreement enters into force.

Article 15 Termination

1. Either Contracting Party may terminate this Agreement by serving a notice of termination through diplomatic channels to the competent authority of the other Contracting Party.
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. If the Agreement is terminated, 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 authorised thereto, have signed the Agreement.

DONE in duplicate at Washington, D.C., this 4th day of August 2011, in the English and Korean languages, both texts being equally authentic.

H.E. Cornelius A. SMITH
Ambassador Extraordinary
And Plenipotentiary

For the Government
of the Commonwealth of The Bahamas

H.E. Duck-soo HAN
Ambassador to the United States
and The Bahamas

For the Government
of the Republic of Korea