

# AGREEMENT ON THE TAXATION OF SAVINGS INCOME

## Cayman Islands

### Article 1

#### General Scope

(1) This Agreement shall apply to interest payments, (as defined in Article 6 of this Agreement), made by a paying agent, (as defined in Article 5 of this Agreement), established within the Cayman Islands to beneficial owners (as defined in Article 3 of this Agreement), who are individuals resident in the Republic of Cyprus.

(2) The scope of this Agreement shall be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

### Article 2

#### Reporting of Information by Paying Agents

(1) Where interest payments, as defined in Article 6 of this Agreement, are made by a paying agent established in the Cayman Islands to beneficial owners, as defined in Article 3 of this Agreement, who are residents of the Republic of Cyprus, the paying agent shall report to the competent authority of the Cayman Islands:

- (a) the identity and residence of the beneficial owner established in accordance with Article 4 of this Agreement;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests;
- (d) information concerning the interest payment specified in Article 6(1) of this Agreement. However the Cayman Islands may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

(2) Within six months following the end of the calendar year, the competent authority of the Cayman Islands shall communicate to the competent authority of the Republic of Cyprus, automatically, the information referred to in paragraph 1 (a) - (d) of this Article, for all interest payments made during that year.

### Article 3

#### Definition of beneficial owner

(1) For the purposes of this Agreement “beneficial owner” shall mean any individual who receives an interest payment or any such individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not deemed to be the beneficial owner when he:

- (a) acts as a paying agent within the meaning of Article 5 of this Agreement;
- (b) acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with

Council Directive 85/61 I/EEC or an equivalent undertaking for collective investment established in the Cayman Islands, or an entity referred to in Article 5(2) of this Agreement and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its contracting party of establishment;

- (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

(2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) of this Article apply, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

#### **Article 4**

##### **Identity and residence of beneficial owners**

(1) The Cayman Islands, within its territory, shall adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

(2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

- (a) for contractual relations entered into before the 1<sup>st</sup> January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the legislation in force in the Cayman Islands on prevention of the use of the financial system for the purpose of money laundering;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the 1<sup>st</sup> January, 2004 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

(3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

- (a) for contractual relations entered into before 1<sup>st</sup> January, 2004 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the legislation in force in the Cayman Islands on prevention of the use of the financial system for the purpose of money laundering;
- (b) for contractual relations entered into, or transactions carried out in the absence of

contractual relations, on or after the 1<sup>st</sup> January, 2004, the paying agents shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

## **Article 5**

### **Definition of paying agent**

(1) For the purposes of this Agreement, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

(2) Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity that:

- (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article; or
- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Council Directive 85/61 I/EEC or an equivalent undertaking for collective investment established in the Cayman Islands.

An economic operator established in the Cayman Islands paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which shall pass this information onto the competent authority of the contracting party where the entity is established.

(3) The entity referred to in paragraph 2 of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph 2. The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party shall lay down the detailed rules for this option for entities established in their territory.

(4) Where the economic operator and the entity referred to in paragraph 2 of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.

(5) The legal persons exempted from sub-paragraph (a) of paragraph 2 of this Article are

- (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;
- (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

**Article 6**  
**Definition of interest payment**

(1) For the purposes of this Agreement “interest payment” shall mean:

- (a) interest paid, or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payment;
- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 5(2) of this Agreement, distributed by -
  - (i) an UCITS authorised in accordance with Council Directive 85/61 I/EEC; or
  - (ii) an equivalent undertaking for collective investment established in the Cayman Islands;
  - (iii) entities which qualify for the option under Article 5(3) of this Agreement;
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the Cayman Islands.
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):
  - (i) an UCITS authorised in accordance with Council Directive 85/61 I/EEC; or
  - (ii) an equivalent undertaking for collective investment established in the Cayman Islands;
  - (iii) entities which qualify for the option under Article 5(3) of this Agreement;
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the Cayman Islands.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of paragraphs (1)(a) and (b) of this Article.

(2) As regard paragraphs (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

(3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

(4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 5(2) of this Agreement, such entity not having qualified for the option under Article 5(3) of this Agreement, such interest shall be considered an interest payment by such entity.

(5) As regards paragraphs (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund, occurs during that period.

(6) By way of derogation from paragraphs (1)(c) and (d) of this Article, a contracting party shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph 1 of this Article interest paid or credited to an account of an entity referred to in Article 5(2) of this Agreement which has not qualified for the option under Article 5(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

(7) The percentage referred to in paragraph 1(d) of this Article and paragraph 3 of this Article shall from 1<sup>st</sup> January 2011 be 25%.

(8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## **Article 7**

### **Transitional provisions for negotiable debt securities**

(1) During the transitional period as defined in Article 10(2) of the Directive, but until the 31<sup>st</sup> December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before the 1<sup>st</sup> March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1<sup>st</sup> March, 2002. However, should the transitional period continue beyond 31<sup>st</sup> December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross up and early redemption clauses and;
- where the paying agent is established in a contracting party applying a withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a) of this Agreement.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a) of this Agreement.

(2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable

debt securities referred to in paragraph 1 in accordance with their national laws.

## **Article 8**

### **Mutual agreement procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

## **Article 9**

### **Confidentiality**

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party may not be used for any purpose other than for the purposes of direct taxation without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

## **Article 10**

### **Entry into force**

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.

## **Article 11**

### **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 to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

## **Article 12**

### **Application and suspension of application**

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the

Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.

(2) Subject to the mutual agreement procedure provided for in Article 8 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.

(3) Subject to the mutual agreement procedure provided for in Article 8 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph 1 should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

### **Article 13 Competent Authorities**

For the purposes of this Agreement the term ‘competent authority’ when applied to the Cayman Islands means the Financial Secretary, and when applied to the Republic of Cyprus means the Minister of Finance or an authorised representative.

### **Article 14 Implementation**

Before 1 January 2005 the Contracting Parties shall adopt the laws, regulations and administrative provisions necessary to comply with this Agreement.

## **ANNEX**

### **List of related entities**

For the purposes of Article 7 of this Agreement, the following entities will be considered to be a “*related entity acting as a public authority or whose role is recognised by an international treaty*”:

#### **ENTITIES WITHIN THE EUROPEAN UNION:**

#### **Belgium**

Vlaams Gewest (Flemish Region)

Région wallonne (Walloon Region)

Région bruxelloise/Brussels Gewest (Brussels Region)

Communauté française (French Community)

Vlaamse Gemeenschap (Flemish Community)

Deutschsprachige Gemeinschaft (German-speaking Community)

## **Spain**

Xunta de Galicia (Regional Executive of Galicia)

Junta de Andalucía (Regional Executive of Andalusia)

Junta de Extremadura (Regional Executive of Extremadura)

Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)

Junta de Castilla- León (Regional Executive of Castilla- León)

Gobierno Foral de Navarra (Regional Government of Navarra)

Govern de les Illes Balears (Government of the Balearic Islands)

Generalitat de Catalunya (Autonomous Government of Catalonia)

Generalitat de Valencia (Autonomous Government of Valencia)

Diputación General de Aragón (Regional Council of Aragon)

Gobierno de las Islas Canarias (Government of the Canary Islands)

Gobierno de Murcia (Government of Murcia)

Gobierno de Madrid (Government of Madrid)

Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)

Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)

Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)

Diputación Foral de Alava (Regional Council of Alava)

Ayuntamiento de Madrid (City Council of Madrid)

Ayuntamiento de Barcelona (City Council of Barcelona)

Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)

Cabildo Insular de Tenerife (Island Council of Tenerife)

Instituto de Crédito Oficial (Public Credit Institution)

Instituto Catalan de Finanzas (Finance Institution of Catalonia)

Instituto Valenciano de Finanzas (Finance Institution of Valencia)

## **Greece**

Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)

Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)



Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

## **France**

La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)

L'Agence française de développement (AFD) (French Development Agency)

Réseau Ferré de France (RFF) (French Rail Network)

Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)

Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)

Charbonnages de France (CDF) (French Coal Board)

Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

## **Italy**

Regions

Provinces

Municipalities

Cassa Deposití e Prestiti (Deposits and Loans Fund)

## **Latvia**

Pašvaldības (Local governments)

## **Poland**

gminy (communes)

powiaty (districts)

województwa (provinces)

związki gmin (associations of communes)

związki powiatów (association of districts)

związki województw (association of provinces)

miasto stołeczne Warszawa (capital city of Warsaw)

Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)

Agencja Nieruchomości Rolnych (Agricultural Property Agency)

## **Portugal**

Região Autónoma da Madeira (Autonomous Region of Madeira)

Região Autónoma dos Açores (Autonomous Region of Azores)

Municipalities

**Slovakia**

mestá a obce (municipalities)

Železnice Slovenskej republiky (Slovak Railway Company)

Štátny fond cestného hospodárstva (State Road Management Fund)

Slovenské elektrárne (Slovak Power Plants)

Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

European Bank for Reconstruction and Development

European Investment Bank

Asian Development Bank

African Development Bank

World Bank / IBRD / IMF

International Finance Corporation

Inter-American Development Bank

Council of Europe Social Development Fund

EURATOM

European Community

Corporación Andina de Fomento (CAP) (Andean Development Corporation)

Eurofima

European Coal & Steel Community

Nordic Investment Bank

Caribbean Development Bank

The provisions of Article 7 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD COUNTRIES :

The entities that meet the following criteria:

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.

- 3) Such public entity is a large and regular issuer of debt.
- 4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.