

HARNEYS



HARNEYS / *British Virgin Islands*

A consolidation of the

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003

September 2014

Important

This is an unofficial version of the Mutual Legal Assistance (Tax Matters) Act as amended. Whilst every effort has been made to ensure correctness, no responsibility is assumed for any errors which may appear.

VIRGIN ISLANDS

No. 18 of 2003

THE MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003

Based on the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003) and amendments made by the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2005 (No. 16 of 2005)(“16/2005”), the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2011 (No. 11 of 2011)(“11/2011”), the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2012 (No. 11 of 2012)(“11/2012”), the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2013 (No. 10 of 2013)(“10/2013”) and the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2014 (No. 12 of 2014)(“12/2014”).

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003

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1. **The USA Agreement**
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I Assent
THOMAS MACAN
Governor
30th December, 2003

VIRGIN ISLANDS

No. 18 of 2003

An Act to make provision for giving effect to the terms of the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, for the exchange of information relating to taxes, and any similar agreement to which the Government of the British Virgin Islands is a party for giving effect to the Directive of the Council of the European Union on taxation of savings income in the form of interest payments, and for matters connected therewith.

16/2005.

16/2005.
11/2011.
11/2012.
10/2013.
12/2014.

Short title and commencement.

[Gazetted 15th January, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

- 1.** This Act may be cited as the Mutual Legal Assistance (Tax Matters) Act, 2003 and shall come into force on the 1st day of January, 2004.

PART I

TAX INFORMATION EXCHANGE: GENERAL

Interpretation for Part I.
16/2005.

- 2.** (1) In this Act, unless the context otherwise requires,

“Agreement” means

- (a) the USA Agreement; and
- (b) any agreement to which this Act applies by virtue of an Order made under section **3(3)**;

“Authority” means the Financial Secretary or a person or authority designated by him under section **4**;

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“Inspector” means a person assigned as Inspector under section 44B(1) of the Income Tax Ordinance;

“Minister” means the Minister to whom responsibility for finance is assigned;

“Representative” means a representative of a competent authority of a requesting party;

“Request” means a request made under the Agreement by a requesting party to the Authority;¹

16/2005. “USA Agreement” means the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, for the exchange of information relating to taxes, together with the Competent Authority Agreements annexed thereto, as set out in **Schedule 1**.

Schedule 1.

16/2005. (2) In this Part, unless the context otherwise requires, any expression which is defined in the Agreement, shall have the same meaning as that given to it in the Agreement.

11/2011. (3) Where in this Act reference is made to **Schedule 1**, this shall be construed to include any Schedule set out in an Order made by the Minister pursuant to section **3(3)**.

Implementation of the Agreement. 16/2005. **3.** (1) This Part shall apply for the purpose of giving effect to the Agreement.
(2) Where an Agreement is amended by the parties thereto, the Minister may, by Order, amend **Schedule 1** accordingly.

16/2005. 11/2011. 16/2005. (3) Where the Government of the British Virgin Islands becomes a party to an agreement similar to the USA Agreement, the Minister may, by Order, provide that this Part shall apply to that agreement with such necessary modifications as may be specified in the Order and the text of that agreement shall be set out in a Schedule to the Order.

10/2013. (4) For the avoidance of doubt and notwithstanding anything to the contrary contained in this Part or in any Agreement,

12/2014. (a) anything required of the Authority pursuant to or in accordance with a provision of an Agreement shall be dealt with in such manner as would be consistent with and satisfy the requirements of the Agreement, and the doing of such thing by the Authority shall be treated as a power the Authority has by virtue of this Act to exercise; and

(b) the entry into force of an Agreement in relation to tax matters shall not be construed to prevent the Authority from requesting or receiving from any person information in relation to criminal tax matters that occurred prior to the coming into force of that Agreement or this Act.

¹ The word “and” should follow the word “Authority;”.

Power of the
Minister to make
Orders.
12/2014.

3A. (1) The Minister may, on the advice of the Authority, make such Order to be published in the *Gazette* in relation to each Agreement as he considers necessary for the effective carrying out of the provisions of the Agreement and this Act.

(2) Without limiting subsection (1), an Order made under subsection (1) may specify the information required to be provided to the Authority, the manner and the deadlines by which the information shall be provided.

(3) A person who fails to comply with an obligation imposed under an Order made pursuant to subsection (1), commits an offence and is liable

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

The Authority.
11/2011.

4. (1) The Financial Secretary shall be the competent authority for the purposes of implementing an Agreement and the administration of this Act generally.

11/2011.
16/2005.

(2) The Financial Secretary may, in writing, designate any person or authority to perform the functions of the Authority under this Part and the Agreement.

11/2011.

(3) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter.

Power of the
Authority to
request
information.

5. (1) The Authority may, for the purposes of complying with a request under the Agreement, by notice in writing, require any person to provide such information as may be specified in the notice, provided that

11/2011.

(a) the person is reasonably believed to be in possession or control of the information to which the notice relates; and

(b) the information requested is

(i) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or any other person or entity, or

(ii) information regarding the beneficial ownership of a company, partnership or other person or entity.

(2) The power under subsection (1) shall not apply to items subject to legal privilege.

(3) The Authority may require any information provided pursuant to this section

(a) to be provided within such time as is specified in the notice;

- (b) to be provided in such form as the Authority may require; and
- (c) to be verified or authenticated in such manner as the Authority may reasonably require.

(4) The Authority may take copies or extracts of any information produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his lien.

12/2014.

- (6) A person who, without lawful or reasonable excuse, fails to comply with
 - (a) a notice issued to him under subsection (1); or
 - (b) any request made of him by the Authority in exercise of any power pursuant to section **3(4)**,

commits an offence and is liable

- (i) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for term not exceeding two years or both; or
- (ii) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

Ensuring
compliance with
section 5.
11/2012.

No. 16 of 2004

5A. (1) For the purposes of achieving the objectives of the requirements of section **5** and notwithstanding anything to the contrary contained in any other enactment, every company shall, in addition to any records required to be kept or maintained under the BVI Business Companies Act, 2004 or any other enactment,

- (a) keep at the office of its registered agent or at such other place or places, within or outside the Virgin Islands, as the directors may determine, the records and underlying documentation of the company; and
- (b) retain the records and underlying documentation for a period of at least five years from the date
 - (i) of completion of the transaction to which the records and underlying documentation relate; or
 - (i)² the company terminates the business relationship to which the records and underlying documentation relate.

² The subparagraph number "(i)" should be replaced with "(ii)".

(2) Where the records and underlying documentation of a company are kept at a place other than at the office of the company's registered agent, the company will provide the registered agent with a written record of the physical address of the place or places at which the records and underlying documentation are kept.

(3) Where the place at which the records and underlying documentation of the company changes, the company shall provide its registered agent with the physical address of the new location of the records and underlying documentation within fourteen days of the change of the location.

(4) The records and underlying documentation of the company shall be in such form as

- (a) are sufficient to show and explain the company's transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(5) For the purposes of this section,

- (a) "business relationship" means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular, habitual or regular basis;
- (b) "company" has the meaning specified in section 3 of the BVI Business Companies Act, 2004, and includes "foreign company" as defined in that section; and
- (c) "records and underlying documentation" includes accounts in relation to

12/2014.

- (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases of goods by the company; and
- (iii) the assets and liabilities of the company.

Power of the Authority to apply for a search warrant.

6. (1) Where

- (a) a person who is issued a notice under section 5, fails to comply or only partly complies with such notice; or
- (b) the Authority is of the opinion that if a notice is issued to a person under section 5, it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Authority may, without prejudice to section 5(6), apply to a Magistrate for a search warrant and a certificate given by the Authority that the issue of a search warrant is required for the purposes of complying with a request shall be sufficient authority for the issue of the search warrant without further inquiry.

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Authority, together with a police officer of the rank of Inspector or above and any other person named in the warrant

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any information appearing to be information of a type in respect of which the warrant was issued or to take, in relation to such information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any information appearing to be information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any information appearing to be information of a type of which the warrant was issued or to state where such information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

Interviews and
tax examinations.

7. (1) Where the competent authority of a requesting party requests that its Representative interview, and examine the records of, a person in the British Virgin Islands and the person concerned notifies the Authority, in writing, that he consents to the interview and examination, the Representative may interview, and examine the records of the person in the British Virgin Islands at such time and place as are agreed upon, in writing, by the Authority and the person concerned.

(2) In conducting an interview and examination under subsection (1), a Representative may

- (a) take statements from the person being interviewed;³
 - (b) with the consent of the person being interviewed, make copies, or take extracts from, any record.
- (3) A Representative shall not have the power
- (a) to compel a person to answer any question;
 - (b) to compel a person to remain in any place for the purpose of an interview;

³ The word "and" should follow the word "interviewed;".

- (c) to compel a person to produce any document or thing;
- (d) to enter and search premises without the consent of the owner or occupier of the premises; or
- (e) to seize or take documents or other things without the consent of the person being interviewed.

(4) A person shall, at any time when he is being interviewed by a Representative, have the right to be advised, at his own expense, by a legal practitioner of his choice.

(5) A statement made to a Representative in the course of an interview under this section shall not, in any proceedings, be used in evidence against the person making the statement.

(6) Where the competent authority of a requesting party so requests, the Authority may, in writing, authorise a Representative to be present when an Inspector is carrying out his functions and powers under section 44B of the Income Tax Ordinance or any other person or authority is carrying out similar tax-related functions or powers under an enactment.

Cap. 206

Protection of persons disclosing confidential information.

8. (1) A person who divulges any confidential information or makes any statement for the purposes of a request shall be deemed not to commit any offence under any law by reason only of such disclosure or the making of such statement, and such disclosure or statement shall be deemed not to be a breach of any confidential relationship between that person and any other person.

(2) No civil claim or action whatsoever shall lie against a person who makes a disclosure or statement referred to in subsection (1) or against such person's principal or employer by reason of such disclosure or statement.

Confidentiality with regard to a request.

11/2011.

9. (1) The particulars of and all matters relating to a request shall be treated as confidential, and no person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates or in any way becomes aware of a request, shall disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with the Agreement.

12/2014.

(2) A person who contravenes subsection (1) commits an offence and is liable

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or
- (b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

10. For the purposes of this Part and the Agreement, the service of any notice or document shall be sufficient if delivered by hand or posted by registered post to the registered or other officer of the addressee and affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate shall be deemed sufficient proof of such service.

PART II

EUROPEAN UNION TAXATION OF SAVINGS INCOME

Interpretation for Part II.

11. (1) In this Part, unless the context otherwise requires,

“Article” means an Article of the Directive;

“Directive” means the Directive of the Council of the European Union known as Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, as set out in **Schedule 2**.

Schedule 2.

“Member State” means a country that is a member of the European Union and includes the Virgin Islands;

“Minister” means the Minister to whom responsibility for finance is assigned;

“residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to section 15;⁴

“UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

(2) Unless the context otherwise requires or this Part expressly provides to the contrary,

(a) an expression that is defined in the Directive shall have the same meaning in this Part as that given to it in the Directive;⁵

(b) where the Directive provides for the construction of an expression therein, that expression shall be construed in accordance with those provisions for the purposes of this Part.

(3) Notwithstanding Article 5, a reference to “competent authority” in this Part or in the Directive shall, unless the context otherwise requires, be construed as a reference to the Financial Secretary or any person or authority designated by him under section 13.

⁴ The word “and” should follow the word “15;”.

⁵ The word “and” should follow the word “Directive;”.

(4) A reference in the Directive to an economic operator shall be construed in accordance with such rules, regulations or guidelines as may be made by the Minister and any such rules, regulations or guidelines made shall be published in the *Gazette*.

(5) For the purposes of the definition of “interest payment” in Article 6,

(a) “interest” includes income mentioned in Article 6(1)(d) only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments defined in Article 6(1)(a) and (b);

(b) “interest payment” as defined in Article 6(1)(c) and (d) does not include income referred to therein from an undertaking for collective investment established within the Virgin Islands that is equivalent to an UCITS where the investment in debt claims referred to in Article 6(1)(a) of such undertaking has not exceeded fifteen per cent of its assets;⁶

(c) interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within the Virgin Islands shall not be considered as an interest payment under Article 6(4) where the investment of such an entity in debt claims referred to in Article 6(1)(a) has not exceeded fifteen per cent of its assets.

Implementation
of the Directive.

12. (1) This Part shall apply for the purpose of giving effect to the Directive.

(2) Where any provision of this Part is inconsistent with a provision of the Directive, this Part shall prevail.

(3) Where the Directive is amended by the Council of the European Union and the amendment is adopted by the Government of the United Kingdom, the Minister may, where he considers it necessary in the public interest to do so, by Order subject to an affirmative resolution of the Legislative Council, make provisions to give effect to the amendment, including such modifications to this Part or **Schedule 2** as are specified in the Order.

Schedule 2.

Competent
authority.
11/2011.

13. (1) The Financial Secretary shall be the competent authority for the purposes of this Part and in relation to the implementation of the Directive.

11/2011.

(2) The Financial Secretary may, in writing and after the approval of the Minister, designate any person or authority to perform the functions of the competent authority under this Part and the Directive.

11/2011.

(3) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter.

Identity of
beneficial owner.

14. (1) A paying agent shall establish the identity of a beneficial owner in accordance with this section.

⁶ The word “and” should follow the word “assets;”.

S.I. No. 48 of 1999

(2) Where the paying agent and the recipient of the interest entered into contractual relations before the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice, 1999⁷ and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner and, if any, the tax identification number allocated to the beneficial owner by his Member State of residence for tax purposes.

(4) Subject to subsection (5), a paying agent shall establish the details specified in subsection (3) on the basis of the passport or the official identity card presented by the beneficial owner.

(5) Where the address or the tax identification number of a beneficial owner does not appear on his passport or official identity card, the paying agent shall establish the address or the tax identification number, as the case may be, on the basis of any other documentary proof of identity presented by the beneficial owner.

(6) Where the tax identification number of a beneficial owner does not appear on his passport, his official identity card or any other documentary proof presented by him, the paying agent shall establish the date and place of birth of the beneficial owner on the basis of the passport or the official identity card presented by the beneficial owner.

Residence of
beneficial owner.

15. (1) A paying agent shall establish the residence of a beneficial owner in accordance with this section.

S.I. No. 48 of 1999

(2) Where the paying agent and the recipient of the interest entered into contractual relations before coming into force of this Part, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice, 1999⁸ and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Subject to subsection (4), where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the residence of the beneficial owner on the basis of the passport, the

⁷ The Anti-money Laundering Code of Practice, 1999 (S.I. No. 48 of 1999) was effectively replaced with the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (S.I. No. 13 of 2008) even though the Anti-money Laundering Code of Practice, 1999 was only repealed in 2010 by the Anti-money (Amendment) Regulations, 2010 (S.I. No. 20 of 2010).

⁸ The Anti-money Laundering Code of Practice, 1999 (S.I. No. 48 of 1999) was effectively replaced with the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (S.I. No. 13 of 2008) even though the Anti-money Laundering Code of Practice, 1999 was only repealed in 2010 by the Anti-money (Amendment) Regulations, 2010 (S.I. No. 20 of 2010).

official identity card or, if necessary, any other documentary proof of identity presented by the beneficial owner.

(4) Where a beneficial owner presents a passport or official identity card issued by a Member State and declares himself to be resident in a third country, the paying agent shall establish the residence of the beneficial owner on the basis of a tax residence certificate issued by a competent tax authority of the third country in which the beneficial owner claims to be resident, and if the beneficial owner fails to present such a certificate, the paying agent shall treat the Member State which issued the passport or other official identity document as the residence of the beneficial owner.

(5) Where a question arises as to whether or not a tax residence certificate or other equivalent document issued by a competent tax authority of a third country is valid, the decision of the competent authority shall be conclusive on the subject.

Withholding tax.

16. (1) Subject to this section, a paying agent established in the Virgin Islands shall levy a withholding tax on interest payments made by that paying agent to beneficial owners who are individuals resident for tax purposes in another Member State.

(2) The rate of withholding tax to be levied under subsection (1) shall be as follows:

- (a) from 1st July, 2005 to 31st December, 2007, fifteen per cent;
- (b) from 1st January, 2008 to 31st December, 2010, twenty per cent; and
- (c) from 1st January, 2011, thirty-five per cent.

(3) A paying agent shall levy withholding tax as follows:

- (a) in the case of an interest payment within the meaning of Article 6(1)(a), on the amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 6(1)(c), on the amount of income referred to in that paragraph;⁹
- (d) in the case of an interest payment within the meaning of Article 6(4) on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(4) For the purposes of subsection (3)(a) and (b), withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner and

⁹ The word "and" should follow the word "paragraph;".

where the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

(5) An economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in a Member State, other than the Virgin Islands, shall for the purposes of this section, be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated to the competent authority of the Member State where the entity is established.

(6) Where an entity referred to in subsection (5) has entered into a formal agreement referred to in that subsection, the economic operator paying interest to, or securing interest for, the entity 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 Member State of establishment, which shall pass that information on to the competent authority of the Member State where the entity is established.

(7) A paying agent shall not levy withholding tax under this section in any case where a beneficial owner expressly authorises the paying agent, in writing, to report information in accordance with section 17, and in any such case, the paying agent and the competent authority shall report information in respect of that beneficial owner in accordance with that section as if that section were in force.

(8) A paying agent shall pay the withholding tax levied by it to the competent authority.

(9) The Government of the Virgin Islands shall retain twenty-five per cent of the withholding tax collected by it for its own use and shall transfer the remaining seventy-five per cent

(a) in the case of withholding tax levied under subsection (1), to the Member State that is the residence of the beneficial owner of the interest on which the withholding tax was levied; and

(b) in the case of withholding tax levied under subsection (5), to the other Member States proportionate to the transfers carried out pursuant to paragraph (a).

(10) Transfers of withholding tax levied shall

(a) in the case of transfers under subsection (9)(a), be made within a period of six months following the end of the tax year of the Virgin Islands; and

(b) in the case of transfers under subsection (9)(b), be made within a period of six months following the end of the tax year of the Member State where the relevant economic operator is established.

(11) This section shall cease to have effect upon the coming into force of section 17.

17. (1) This section shall come into force on such date as the Minister may, by Order published in the *Gazette*, appoint.¹⁰

(2) Where the beneficial owner of interest is resident in a Member State other than the Virgin Islands, the paying agent shall report to the competent authority

- (a) the identity and residence of the beneficial owner established in accordance with sections 14 and 15;
- (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 interest; and
- (d) information concerning the interest payment in accordance with subsection (3).

(3) Reports of information concerning interest payments shall distinguish between the following categories of interest and indicate

- (a) in the case of an interest payment within the meaning of Article 6(1)(a), the amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 6(1)(c), either the amount of income referred to in that paragraph or the full amount of the distribution;¹¹
- (d) in the case of an interest payment within the meaning of Article 6(4), the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(4) The competent authority shall,

- (a) at least once a year and within six months following the end of each tax year of the Virgin Islands; and
- (b) without requiring a request to do so,

¹⁰ By virtue of the Mutual Legal Assistance (Tax Matters)(Automatic Exchange of Information) Order, 2011 section 17 came into effect on 1 January, 2012. The Order further provides that for the tax year ending 31 December 2011, the competent authority shall apply withholding tax for that year and any withholding tax levied shall be transferred as provided in section 16 notwithstanding that section 16 ceases to have effect from 1 January, 2012.

¹¹ The word "and" should follow the word "distribution;".

communicate to the competent authority of the Member State that is the residence of the beneficial owner, the information reported under subsections (2) and (3) in respect of that beneficial owner.

Confidentiality.

18. (1) Information established or reported by a paying agent in accordance with this Part shall be treated as confidential, and no person shall disclose any such information except in accordance with this Part.

12/2014.

(2) A person who contravenes subsection (1) commits an offence and is liable

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

Application of agreement with Member State. 11/2011.

19. (1) Where, pursuant to the Directive, the Government of the Virgin Islands enters into an agreement with the Government of a Member State to implement the provisions of the Directive, the provisions of this Part shall be applied in accordance with that agreement, notwithstanding any inconsistency with a provision of the Directive.

Schedule 3.

(2) An agreement referred to in subsection (1) may be in the form set out in **Schedule 3**.

Use of information.

20. (1) Any information transmitted by or to a Member State shall be used only for the purpose for which it was provided.

(2) The Government of the Virgin Islands may unilaterally suspend the operation of an agreement referred to in section 19 on the grounds that information transmitted pursuant to the agreement has been used for a purpose other than that for which it was provided.

10/2013.

21. (1) Where an obligation is created under this Act in respect of a person (other than the Authority or any person acting in accordance with his directive) for which a penalty is not prescribed, a failure to comply with the obligation shall constitute an offence.

12/2014.

(2) A person who contravenes subsection (1) commits an offence and is liable

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.

SCHEDULE 1

[Section 2(1)]

THE U.S.A. AGREEMENT

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, INCLUDING THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, ("the parties"), desiring to facilitate the exchange of information relating to taxes, have agreed as follows:

ARTICLE 1

SCOPE OF AGREEMENT

The competent authorities of the parties shall provide assistance through exchange of information relating to the administration and enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that may be relevant to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax evasion in relation to such persons. The territorial scope of this Agreement, in respect of the United Kingdom, is the territory of the British Virgin Islands.

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 party, or whether the person by whom the information is held is a resident or national 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

TAX COVERED

The taxes covered by this Agreement are in the case of the United States of America, federal income taxes; and in the case of the British Virgin Islands, such taxes as may from time to time, be imposed by law; provided that the types of tax covered may be extended by agreement between the competent authorities in the form of an exchange of letters.

ARTICLE 4

DEFINITIONS

In this Agreement –

“competent authority” means, for the United States of America, the Secretary of the Treasury or his delegate, and for the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;

“criminal tax evasion” means wilfully, with dishonest intent to defraud the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred. The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability, and the conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either party. The competent authorities shall agree on the scope and extent falling within this definition;

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

“information gathering measures” means judicial, regulatory or administrative procedures enabling a requested party to obtain and provide the information requested;

“items subject to legal privilege” means:

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made –
 - (i) in connection with the giving of legal advice, or

- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the items are in the possession of a person who is entitled to possession of them. Items held with the intention of furthering a criminal purpose are not subject to legal privilege, and nothing in this Article shall prevent a professional legal adviser from providing the name and address of a client where doing so would not constitute a breach of legal privilege;

“person” means a natural person, a company or any other body or group of persons;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;¹²

“tax” means any tax covered by this Agreement.

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 with suggestions of the additional information 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 information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, 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 party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

¹² The word “and” should follow the word “party;”.

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity,¹³
- (b) information regarding the beneficial ownership of companies, partnerships and other persons.

5. 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 sought to the request:

- (a) the name of the authority seeking the information or conducting the investigation or proceeding to which the request relates;
- (b) the identity of the taxpayer under examination or investigation;
- (c) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought;
- (d) the tax purposes for which the information is sought;
- (e) the period of time with respect to which the information is requested;
- (f) 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 and may be relevant to the tax purposes of the request;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;¹⁴
- (h) a declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under this Agreement.

6. 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 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;¹⁵

¹³ The word "and" should follow the word "capacity;".
¹⁴ The word "and" should follow the word "requested;".
¹⁵ The word "and" should follow the word "request;".

- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within a reasonable period relative to the nature 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 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, 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 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 permit representatives of the competent authority of the requesting party to be present when a tax examination is being carried out 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.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The Competent authority of a 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, 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 of the requested party.
2. This Agreement shall not impose upon a party any obligation to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.

3. 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.

4. The requested party shall not be required to obtain and provide information which the requesting party would be unable to obtain in similar circumstances:

- (a) under its own laws for the purpose of the enforcement of its own tax laws; or
- (b) in response to a valid request from the requested party under this Agreement.

ARTICLE 8

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the parties shall be kept confidential and shall be disclosed only to persons or authorities (including judicial, administrative and, in the case of the United States, Congressional oversight authorities or, in the case of the British Virgin Islands, a select committee of the Legislative Council) officially concerned with the purposes specified in Article 1, 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.

2. Except as provided in paragraph 1, information provided under this Agreement shall not be disclosed to any third party.

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, provided and to the extent that these are not so burdensome or time-consuming as to act as impediments to access to the information.

ARTICLE 10

ADMINISTRATION COSTS OR DIFFICULTIES

1. The requesting party shall reimburse the requested party for direct out of pocket costs of processing each request (including direct out of pocket costs of litigation directly relating to such request), as agreed by the parties.

2. In the event that compliance with the obligations under this Agreement occasions undue difficulty for either party, either as a result of the number or complexity of requests, the respective competent authorities shall consult with a view to resolving the difficulty under Article 11.

ARTICLE 11

MUTUAL AGREEMENT PROCEDURE

Where difficulties or doubts arise between the 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.

ARTICLE 12

ENTRY INTO FORCE

1. This Agreement shall enter into force when each party has notified the other of the completion of its necessary internal procedures for entry into force. Upon entry into force it shall have effect for criminal tax evasion beginning on 1 January 2004, and with respect to all other matters covered in Article 1 beginning on 1 January 2006.
2. Upon entry into force, the provisions of the Agreement shall have effect with respect to criminal tax evasion for taxable periods commencing from 2003, and shall have effect with respect to all other matters for taxable periods commencing from 2006.

ARTICLE 13

TERMINATION

1. This Agreement shall remain in force until terminated by either party.
2. Either 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 three months after the date of receipt of notice of termination by the other party.
3. A party which terminates this Agreement 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 Washington, in duplicate, this 3rd day of April, 2002.

For the Government of
The United States of
America:

PAUL O'NEILL

For the Government of
the United Kingdom of
Great Britain and Northern
Ireland:

CHRISTOPHER MEYER

For the Government of
The British Virgin Islands:

COMPETENT AUTHORITY AGREEMENT BETWEEN THE DEPARTMENT OF THE TREASURY, UNITED STATES OF AMERICA AND THE MINISTRY OF FINANCE, BRITISH VIRGIN ISLANDS

The Competent Authorities agree that “criminal tax evasion” as defined in Article 4 of the Tax Information Exchange Agreement (“the Agreement”) between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, shall be interpreted as follows:

1. “Criminal tax evasion” shall include, but not necessarily be limited to, the following offences under U.S. law, provided that the conduct involved otherwise falls within the definition of criminal tax evasion provided in Article 4 of the Agreement:

- A. attempting to evade or defeat the assessment or collection of a tax;
- B. signing and filing a document, required by law to be filed to advise tax authorities of the amount of tax due, or pertaining to the collection or payment thereof, that is false as to any material matter;
- C. aiding or assisting in the preparation of a document, required by law to advise tax authorities of the amount of tax due, that is false as to any material matter, whether or not such falsity is with the knowledge or consent of the person authorised or required to present such document;
- D. corruptly obstructing or impeding, or endeavouring to obstruct or impede, the due administration of tax assessment and collection; and
- E. conspiring to commit any of the above-stated offences or conspiring to defraud the government.

In determining whether any of these offences “relates to a tax liability that is significant or substantial either as an absolute amount or in relation to an annual tax liability” (as required by the definition in Article 4 of the Agreement), it shall not be required that the tax liability in question (1) be owed by the perpetrator of the offence himself or itself (for example, where the perpetrator aids and assists in the preparation of another taxpayer’s document); (2) relate to the tax year referenced in the document forming the basis of the offence; or (3) be exactly determined or formally assessed at the time of the offence or the making of the request for assistance, provided that the request contains evidence of a tax liability sufficient to meet the requirements of the Agreement. Furthermore in the case of any above-stated offence which does not require an existing tax liability as an element, such as an offence described in B, C, D and perhaps E, the requesting party may show that the offence “relates to a tax liability that is significant or substantial either as an absolute amount or in relation to an annual tax liability” by establishing that the perpetrator had a tax evasion motive falling within this description.

2. The following factual circumstances, especially where they appear in a combination or pattern, shall be relevant to the Competent Authority’s determination

whether the conduct described in a request constitutes a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities:

- A. preparing, causing to be prepared, signing or filing any document that is (1) required by law to be filed to advise tax authorities of the amount of tax due and (2) false as to any matter necessary to the determination of such tax or having a tendency to impede the tax authorities in verifying or auditing the document;
- B. keeping a double set of books, one of which is directed at establishing the true amount of tax due and the other of which is directed at establishing less than the true amount of tax due and is used to prepare, or is available to support, a false declaration to tax authorities regarding the amount of tax due;
- C. making false entries or alterations, directed at establishing less than the true amount of tax due, to a set of books that is used to prepare, or is available to support, a false declaration to tax authorities regarding the amount of tax due;
- D. creating false invoices or documents, or altering invoices or documents that are used to prepare, or are available to support, a false declaration to tax authorities regarding the amount of tax due;
- E. destroying books or records that establish the true amount of tax due;
- F. concealing assets or sources of income that constitute evidence of, or that could be used to satisfy, the true amount of tax due; and
- G. handling one's affairs to avoid making the usual records that constitute evidence of the true amount of tax due.

Department of Treasury
Internal Revenue Service
United States of America

Ministry of Finance
Government of the
British Virgin Islands

CAROL A. DUNAHOO
Director, International
Large and Mid-Size Business
Division

FRANK J. SAVAGE
Governor

Date: April 3, 2002

Date: April 3, 2002

**COMPETENT AUTHORITY AGREEMENT BETWEEN THE DEPARTMENT OF THE
TREASURY, UNITED STATES OF AMERICA AND THE MINISTRY OF FINANCE,
BRITISH VIRGIN ISLANDS**

With reference to the Tax Information Exchange Agreement ("the Agreement") between the Government of the United States of America and the Government of the

United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, the Competent Authorities agree as follows:

1. With reference to Article 5, Section 2 of the Agreement, in the event that a requesting party is unable to provide additional information as requested of it pursuant to the provisions of Article 5, Section 1, this circumstance may frustrate the information gathering measures available to the requested party.
2. Accordingly, it is understood by the parties that the Competent Authorities will work together in an effort to ensure that, where a request is received by the requested party, it is able to properly and effectively implement the appropriate information gathering measures.

Department of Treasury
Internal Revenue Service
United States of America

Ministry of Finance
Government of the
British Virgin Islands

CAROL A. DUNAHOO
Director, International
Large and Mid-Size Business
Division

FRANK J. SAVAGE
Governor

Date: April 3, 2002

Date: April 3, 2002

SCHEDULE 2

[Section 11(1)]

COUNCIL DIRECTIVE 2003/48/EC

OF 3 JUNE 2003

**ON TAXATION OF SAVINGS INCOME IN THE FORM OF
INTEREST PAYMENTS**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas –

1. Articles 56 to 60 of the Treaty guarantee the free movement of capital.
2. Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.
3. By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.
4. In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.
5. In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in their Member State of residence on interest they receive in another Member State.
6. This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.

7. This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meeting of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.
8. The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
9. The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.
10. Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
11. The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.
12. In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
13. The scope of this Directive should 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.
14. The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.
15. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.
16. The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence

for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.

17. In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During a transitional period given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35%, these three Member States should apply a withholding tax to the savings income covered by this Directive.
18. In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.
19. Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.
20. Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.
21. The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.
22. In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.
23. This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.
24. So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is

necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.

25. The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.
26. This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

INTRODUCTORY PROVISIONS

Article 1

Aim

1. The ultimate aim of the Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with laws of the latter Member States.
2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing the interest.

Article 2

Definition of beneficial owner

1. For the purposes of this Directive, “beneficial owner” means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:
 - (a) he acts as a paying agent within the meaning of Article 4(1); or
 - (b) he 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 Directive 85/611/EEC or an entity referred to in Article 4(2) of this Directive 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 Member State of establishment; or

- (c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2).
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) applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 3

Identity and residence of beneficial owners

1. Each Member State shall, within its territory, 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 Articles 8 to 12.

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 1 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 regulations in force in its State of establishment and to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;¹⁶
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 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 shall 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 on that 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

¹⁶ The word “and” should follow the word “laundering;”.

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 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 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 regulations in force in its State of establishment and to Directive 91/308/EEC;¹⁷
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent 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 4

Definition of paying agent

1. For the purposes of this Directive, "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 Member State 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 by that entity, that:
 - (a) it is a legal person, with the exception of those legal persons referred to in paragraph 5; or¹⁸

¹⁷ The word "and" should follow the word "91/308/EEC";

¹⁸ The word "or" should be deleted.

- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another Member State 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 Member State of establishment, which shall pass this information on to the competent authority of the Member State where the entity is established.

- 3. The entity referred to in paragraph 2 shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c). The exercise of this option shall require a certificate to be issued by the Member State in which the entity is established and presented to the economic operator by this entity.

Member States 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 are established in the same Member State, that Member State shall take the necessary measures to ensure that the entity complies with the provisions of this Directive when it acts as a paying agent.
- 5. The legal persons exempted from paragraph 2(a) are:
 - (a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag;¹⁹
 - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB)

Article 5

Definition of competent authority

For the purposes of this Directive, “competent authority” means:

- (a) for Member States, any of the authorities notified by the Member States to the Commission;²⁰
- (b) for third countries, the competent authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

¹⁹ The word “and” should follow the word “kommanditbolag;”
²⁰ The word “and” should follow the word “Commission;”.

Article 6

Definition of interest payment

1. For the purposes of this Directive, “interest payment” means:
 - (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 payments shall not be regarded as interest payments;
 - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claim referred to in (a);
 - (c) income deriving from interest payments either directly or through an entity referred to in Article 4(2), distributed by:
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC,
 - (ii) entities which qualify for the option under Article 4(3),²¹
 - (iii) undertakings for collective investment established outside the territory referred to in Article 7,²²
 - (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 Directive 85/611/EEC,
 - (ii) entities which qualify for the option under Article 4(3),²³
 - (iii) undertakings for collective investment established outside the territory referred to in Article 7.

However, Member States shall have the option of including income mentioned under (d) 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 (a) and (b).

2. As regards paragraph 1(c) and (d), 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.

²¹ The word “and” should follow the word “Article 4(3),”.

²² The word “and” should follow the word “Article 7;”.

²³ The word “and” should follow the word “Article 4(3),”.

3. As regards paragraph 1(d), 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, is paid to or credited to an account held by an entity referred to in Article 4(2), such entity not having qualified for the option under Article 4(3), it shall be considered an interest payment by such entity.
5. As regards paragraph 1(b) and (d), Member States shall have the option of requiring paying agents in their 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 paragraphs²⁴ 1(c) and (d), Member States 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 their territory where the investment in debt claims referred to in paragraph 1(a) of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within their territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) has not exceeded 15% of its assets.

The exercise of such option by a Member State shall be binding on other Member States.

7. The percentage referred to in paragraph 1(d) and paragraph 3 shall from 1 January 2011 be 25%.
8. The percentages referred to in paragraph 1(d) and in paragraph 6 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 and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 7

Territorial scope

This Directive shall apply to interest paid by a paying agent established within the territory to which the Treaty applies by virtue of Article 299 thereof.

²⁴ The word "paragraphs" should read "paragraph".

CHAPTER II

EXCHANGE OF INFORMATION

Article 8

Information reporting by the paying agent

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of
 - (a) the identity and residence of the beneficial owner established in accordance with Article 3;
 - (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 interest;²⁵
 - (d) information concerning the interest payment in accordance with paragraph 2.
2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of interest and indicate:
 - (a) in the case of an interest payment within the meaning of Article 6(1)(a): the amount of interest paid or credited;
 - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;
 - (c) in the case of an interest payment within the meaning of Article 6(1)(c): either the amount of income referred to in that paragraph or the full amount of the distribution;
 - (d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);²⁶
 - (e) where a Member State exercises the option under Article 6(5): the amount of annualised interest.

²⁵ The word "and" should follow the word "interest;".

²⁶ The word "and" should follow the word "2(1);".

However, Member States 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.

Article 9

Automatic exchange of information

1. The competent authority of the Member State of the paying agent shall communicate the information referred to in Article 8 to the competent authority of the Member State of residence of the beneficial owner.
2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent, for all interest payments made during that year.
3. The provisions of Directive 77/799/EEC shall apply to the exchange of information under this Directive, provided that the provisions of this Directive do not derogate therefrom. However, Article 8 of Directive 77/799/EEC shall not apply to the information to be provided pursuant to this chapter.

CHAPTER III

TRANSITIONAL PROVISIONS

Article 10

Transitional period

1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Belgium, Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member States in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

2. The transitional period shall end at the end of the first full fiscal year following the later of the following dates:
 - the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra,

providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the "OECD Model Agreement") with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),

- the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.
3. At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

Article 11

Withholding tax

1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.
2. The paying agent shall levy withholding tax as follows:
 - (a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;
 - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
 - (c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;
 - (d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the members of the entity

referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);²⁷

- (e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest.
3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.
 4. The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.
 5. During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

Article 12

Revenue sharing

1. Member States levying withholding tax in accordance with Article 11(1) shall retain 25% of their revenue and transfer 75% of the revenue to the Member State of residence of the beneficial owner of the interest.
2. Member States levying withholding tax in accordance with Article 11(5) shall retain 25% of the revenue and transfer 75% to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.
3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.
4. Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

²⁷ The word “and” should follow the word “2(1);”.

Article 13

Exceptions to the withholding tax procedure

1. Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:
 - (a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest paid to the beneficial owner by that paying agent; in such cases, the provisions of Article 9 shall apply;²⁸
 - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes in accordance with paragraph 2.
2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:
 - (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
 - (b) the name and address of the paying agent;²⁹
 - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

Article 14

Elimination of double taxation

1. The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.
2. If interest by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the

²⁸ The word "and" should follow the word "apply;".

²⁹ The word "and" should follow the word "agent;".

Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

3. If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.
4. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

Article 15

Negotiable debt securities

1. During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 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), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 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 as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 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, 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).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2. Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

CHAPTER IV

MISCELLANEOUS AND FINAL PROVISIONS

Article 16

Other withholding taxes

This Directive shall not preclude Member States from levying other types of withholding tax than that referred to in Article 11 in accordance with their national laws or double-taxation conventions.

Article 17

Transposition

1. Before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.
2. Member States shall apply these provisions from 1 January 2005 provided that:
 - (i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;³⁰
 - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12).
3. The Council shall decide, by unanimity, at least six months before 1 January 2005, whether the condition set out in paragraph 2 will be met, having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Council does not decide that the condition will be met, it shall, acting unanimously on a proposal by the Commission, adopt a new date for the purposes of paragraph 2.

³⁰ The word “and” should follow the word “Council;”.

4. When Member States adopt the provisions necessary to comply with this Directive, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
5. Member States shall forthwith inform the Commission thereof and communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and a correlation table between this Directive and the national provisions adopted.

Article 18

Review

The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports, the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

Article 19

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 20

Addressees

This Directive is addressed to the Member States.
Done at Luxembourg, 3 June 2003.

For the Council
The President
N. CHRISTODOULAKIS

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 15

For the purposes of Article 15, 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 las 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 Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	National Telecommunications Organisation National Railways Organisation 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 Depositi e Prestiti (Deposits and Loans Fund)

Portugal Região Autónoma de Madeira (Autonomous Region of Madeira)
 Região Autónoma dos Açores (Autonomous Region of Azores)
 Municipalities

- 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 Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

- entities in third countries:

Those 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;³¹
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

³¹ The word “and” should follow the word “debt;”.

SCHEDULE 3

[Section 19(2)]

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND [EU MEMBER STATE THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION]

WHEREAS:

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of the European Union (hereinafter referred to as “the Council”) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1st July, 2005 provided that
 - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;³²
 - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;
2. The British Virgin Islands (“BVI”) is not a member of the European Union and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;
4. The BVI has agreed to apply a withholding tax with effect from 1st July 2005, provided the European Union Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;

³² The word “and” should follow the word “Council;”.

5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive;
6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for

- (a) the automatic exchange of information by the competent authority of [the Member State] to the competent authority of the BVI in the same manner as to the competent authority of a Member State;
- (b) the application by the BVI, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (c) the automatic exchange of information by the competent authority of the BVI to the competent authority of [the Member State] in accordance with Article 13 of the Directive;³³
- (d) the transfer by the competent authority of the BVI to the competent authority of [the Member State] of 75% of the revenue of the withholding tax in respect of interest payments made by a paying agent established in the BVI to an individual resident in [the Member State].

Article 1 Definitions

For the purposes of this Agreement, the term:

- (a) “competent authority”, when applied to the contracting parties means,
 - (i) in the case of the BVI, the Financial Secretary; and
 - (ii) in the case of [the Member State], _____;
- (b) “[the Member State]” means _____;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;³⁴

³³ The word “and” should follow the word “Directive;”.

³⁴ The word “and” should follow the word “Agreement;”.

- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20th December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Article 2 Withholding of Tax by Paying Agents

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the BVI to beneficial owners within the meaning of Article 6 of this Agreement who are residents of **[the Member State]** shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement. The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 3 Reporting of Information by Paying Agents

- (1) Where interest payments, as defined in Article 9 of this Agreement, are made by a paying agent established in **[the Member State]** to beneficial owners, as defined in Article 6 of this Agreement, who are residents of the BVI, or where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority
 - (a) the identity and residence of the beneficial owner established in accordance with Article 7 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; and
 - (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party 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 paid to the beneficial owner within the tax year,

and **[the Member State]** shall comply with paragraph (2) of this Article.

- (2) Within six months following the end of their tax year, the competent authority of **[the Member State]** shall communicate to the competent authority of the BVI, automatically, the information referred to in paragraph 1(a) – (d) of this Article, for all interest payments made during that year.

Article 4 Exceptions to the Withholding Tax Procedure

- (1) The BVI when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:
 - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;³⁵
 - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating
 - (i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
 - (ii) the name and address of the paying agent; and
 - (iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request, shall bear the date of request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the BVI in which the paying agent is established shall communicate the information referred to in Article 3(1) of this Agreement to the competent authority of **[the Member State]** as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 5 Basis of assessment for withholding tax

- (1) A paying agent established in the BVI shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
 - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;

³⁵ The word “and” should follow the word “agent;”.

- (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that subparagraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
 - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that subparagraph;
 - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
 - (e) where the BVI exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of subparagraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.
 - (3) The imposition of withholding tax by the BVI shall not preclude **[the Member State]** from taxing income in accordance with its national law.
 - (4) During the transitional period, the BVI may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this agreement.

Article 6 Definition of “beneficial owner”

- (1) For the purpose of this Agreement, “beneficial owner” means an individual who receives an interest payment or any 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 the beneficial owner when he
 - (a) acts as a paying agent within the meaning of Article 8(1) 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 Directive 85/611/EEC or an equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(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; or
 - (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 applies, 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 7 Identity and residence of beneficial owners

- (1) Each Party shall, within its territory, 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 1st July, 2005, 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 regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10th June 1991 in the case of **[the Member State]** or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;³⁶
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st July, 2005 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 cards, the address shall be established on the basis of any other documentary proof of identity presented by the

³⁶ The word “and” should follow the word “laundering;”.

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 1st July, 2005 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of **[the Member State]**, or equivalent legislation in the case of the BVI;³⁷
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st July, 2005, the paying agent 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 a 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 8 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 of 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

³⁷ The word "and" should follow the word "BVI;".

- (a) it is a legal person with the exception of those legal persons referred to in paragraph 5 of this Article;
- (b) its profits are taxed under the general arrangements for business taxation; or
- (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator 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 on to 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 subparagraph (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 subparagraph (a) of paragraph (2) of this Article are,
 - (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/oppet bolag and kommanditbolag;³⁸
 - (b) in Sweden: handelsbolag (HB) and Kommanditbolag (KB).

Article 9 Definition of “interest payment”

- (1) For the purposes of this Agreement, “interest payment” means
 - (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;

³⁸ The word “and” should follow the word “kommanditbolag;”.

- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in subparagraph (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
 - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council,
 - (ii) an equivalent undertaking for collective investment established in the BVI,
 - (iii) entities which qualify for the option under Article 8(3) of this Agreement, or
 - (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 BVI; and
- (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 subparagraph (a):
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC,
 - (ii) an equivalent undertaking for collective investment established in the BVI,
 - (iii) entities which qualify for the option under Article 8(3) of this Agreement, or
 - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of this Article 299 thereof and outside the BVI.

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 paragraph (1)(a) and (b) of this Article.

- (2) As regards paragraph (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 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph (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 paragraph (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 8(2) of this Agreement which has not qualified for the option under Article 8(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 1st 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 10 Withholding Tax Revenue sharing

- (1) The BVI shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to **[the Member State]**.

- (2) The BVI levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to [the Member State] proportionate to the transfers carried out pursuant to paragraph (1) of this Article.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of the BVI.
- (4) The BVI levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 11 Elimination of double taxation

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by the BVI of the withholding tax to which this Agreement refers in accordance with the following provisions:
 - (a) if interest received by a beneficial owner has been subject to withholding tax in the BVI, [the Member State] shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, [the Member State] shall repay the excess amount of tax withheld to the beneficial owner;³⁹
 - (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in subparagraph (a) of this Article is applied.
- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

Article 12 Transitional provisions for negotiable debt securities

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st 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 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period

³⁹ The word "and" should follow the word "owner;".

continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities

- (a) which contain gross up and early redemption clauses; and
- (b) where the paying agent is defined in Article 8 of this Agreement is established in a contracting party applying 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 1st 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 9(1)(a) of this Agreement.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 9(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 13 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 14 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 shall 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 15 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive the BVI shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of [the Member State] the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period the BVI elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

Article 16 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 17 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 18 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 13 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 13 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.

ENTERED into this day of, , 2005

For the Government of the British
Virgin Islands

For the Government of

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12

For the purposes of Article 12, 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 Aragón)
- 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 Catalán 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 Depositi e Prestiti (Deposits and Loans Fund)

Latvia

- Pašvaldības (Local Governments)

Poland

- gminy (communes)
- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (associations of districts)
- 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 de 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 (CAF) (Andean Development Corporation)
- Eurofima
- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 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.

AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND [EU MEMBER STATE THAT IS TO APPLY THE WITHHOLDING TAX IN THE TRANSITIONAL PERIOD]

WHEREAS

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of European Union (hereinafter referred to as “the Council) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1st July, 2005 provided that

- “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra

apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;⁴⁰

- (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12”);
2. The British Virgin Islands (“BVI”) is not a member of the European Union (and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
 3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;
 4. The BVI has agreed to apply a withholding tax with effect from 1st July, 2005, provided the European Union Member States have adopted the laws, regulations and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;
 5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive;
 6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for

- (a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;

⁴⁰ The word “and” should follow the word “Council;”.

- (b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive; and
- (c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding tax levied under this Agreement,

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

Article 1 Definitions

For the purposes of this Agreement, the term

- (a) “competent authority”, when applied to the contracting parties means,
 - (i) in the case of the BVI, the Financial Secretary; and
 - (ii) in the case of [the Member State], _____;
- (b) “[the Member State]” means _____;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;⁴¹
- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20th December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Article 2 Withholding Tax by Paying Agents

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the jurisdiction of a contracting party to beneficial owners within the meaning of Article 6 of this Agreement who are residents of the other contracting party shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement. The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

Article 3 Reporting of Information by Paying Agents

Where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority

⁴¹ The word “and” should follow the word “Agreement;”.

- (a) the identity and residence of the beneficial owner established in accordance with Article 7 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 interest;⁴²
- (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party 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 the total amount of the proceeds from sale, redemption or refund paid to the beneficial owner within the tax year.

Article 4 Exceptions to the Withholding Tax Procedure

- (1) A contracting party when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld,
 - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;⁴³
 - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating
 - (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner; and
 - (b) the name and address of the paying agent; and
 - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following

⁴² The word “and” should follow the word “interest;”.

⁴³ The word “and” should follow the word “agent;”.

such request, shall bear the date of the request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the contracting party in which the paying agent is established shall communicate the information referred to in Article 3 of this Agreement to the competent authority of the contracting party of the country of residence of the beneficial owner. Such communication shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

Article 5 Basis of assessment for withholding tax

- (1) A paying agent established in a contracting party shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
 - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;
 - (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that subparagraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
 - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that subparagraph;
 - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
 - (e) where a contracting party exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of subparagraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.
- (3) The imposition of withholding tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.

- (4) During the transitional period, the contracting party levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this Agreement.

Article 6 Definition of “beneficial owner”

- (1) For the purposes of this Agreement, “beneficial owner” means an individual who receives an interest payment or any 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 the beneficial owner when he
 - (a) acts as a paying agent within the meaning of Article 8(1) 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 Directive 85/611/EEC or an equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(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; or
 - (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 applies, 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 7 Identity and residence of beneficial owners

- (1) Each Party shall, within its territory, 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 1st July, 2005, 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 regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10th June, 1991 in the case of **[the Member State]** or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;⁴⁴
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st July, 2005, 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 1st July, 2005, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of **[the Member State]** or equivalent legislation in the case of the BVI; and
 - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1st July, 2005, the paying agent 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

⁴⁴ The word "and" should follow the word "laundering;".

certificate, the Member State which issued the passport or other official document shall be considered to be the country of residence.

Article 8 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;
 - (b) its profits are taxed under the general arrangement for business taxation; or
 - (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator 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 on to 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 subparagraph (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 subparagraph (a) of paragraph (2) of this Article are,

- (a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/oppet bolag and kommanditbolag;⁴⁵
- (b) in Sweden: handelsbolag (HB) and Kommanditbolag (KB).

Article 9 Definition of “interest payment”

- (1) For the purposes of this Agreement, “interest payment” means
 - (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 subparagraph (a);
 - (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
 - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council,
 - (ii) an equivalent undertaking for collective investment established in the BVI,
 - (iii) entities which qualify for the option under Article 8(3) of this Agreement, or
 - (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 BVI; and
 - (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 subparagraph (a):
 - (i) an UCITS authorised in accordance with Directive 85/611/EEC, or⁴⁶
 - (ii) an equivalent undertaking for collective investment established in the BVI,

⁴⁵ The word “and” should follow the word “kommanditbolag;”.

⁴⁶ The word “or” should be deleted.

- (iii) entities which qualify for the option under Article 8(3) of this Agreement, or
- (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 BVI.

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 paragraph (1)(a) and (b) of this Article.

- (2) As regards paragraph 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 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph 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 paragraph 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 8(2) of this Agreement which has not qualified for the option under Article 8(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 1st January, 2011 be 25%.
- (8) The percentage 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 10 Withholding Tax Revenue sharing

- (1) A contracting party which applies withholding tax shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.
- (2) A contracting party levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.
- (4) A contracting party levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 11 Elimination of double taxation

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding tax to which this Agreement refers in accordance with the following provisions:
 - (a) if interest received by a beneficial owner has been subject to withholding tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;⁴⁷
 - (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such

⁴⁷ The word "and" should follow the word "owner;".

other withholding tax shall be credited before the procedure in subparagraph (a) of this Article is applied.

- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph 1 of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

Article 12 Transitional provisions for negotiable debt securities

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31st December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1st 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 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1st March, 2002. However, should the transitional period continue beyond 31st December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities
 - (a) which contain gross up and early redemption clauses; and
 - (b) where the paying agent as defined in Article 8 of this Agreement is established in a contracting party applying 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 1st 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 9(1)(a) of this Agreement.

If a further issue is made on or after 1st March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 9(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 13 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 14 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 shall 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 15 Transitional Period

At the end of the transitional period as defined in Article 10(2) of the Directive the contracting parties shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period either of the contracting parties elects to apply the automatic exchange of information provision in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

Article 16 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 17 Termination

- (1) This Agreement shall remain in force until termination 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 18 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 13 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 13 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.

ENTERED into this day of, 2005.

For the Government of the
British Virgin Islands

For the Government of

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12

For the purposes of Article 12, 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 Aragón)
- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)
- Gobierno de las 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 Catalán 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 Depositi e Prestiti (Deposits and Loans Fund)

Latvia

- Pašvaldības (Local Governments)

Poland

- gminy (communes)
- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (associations of districts)
- 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 de 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 (CAF) (Andean Development Corporation)
- Eurofima
- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the abovementioned 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.

Passed by the Legislative Council this 30th day of December, 2003.

V. INEZ ARCHIBALD,
Speaker.

DENNISTON FRASER,
Clerk of the Legislative Council.

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