A Model Effective Tax Information Exchange Agreement

Proposed for Adoption by the United Nations Committee of Experts on International Cooperation in Tax Matters by Professor Michael J. McIntyre, October, 2009

AGREEMENT BETWEEN THE GOVERNMENT OF [COUNTRY A] AND THE GOVERNMENT OF [COUNTRY B], FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Government of A and the Government of B, desiring to facilitate the effective exchange of information relating to taxes, have agreed as follows:

Article 1
Object and Scope

The Contracting States shall provide each other with information concerning civil and criminal tax matters covered by this Agreement that may be relevant to the administration or enforcement of their domestic laws. In particular, they shall exchange information that would be helpful in preventing avoidance or evasion of those taxes, including information that may be relevant to the determination, assessment and collection of those taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. The competent authorities shall, through consultation, develop appropriate methods and techniques for the effective exchanges of information under this Article.

Article 2
Jurisdiction

A requested party is obligated to provide information which is held by its authorities or is in the possession of or under the control of a resident or nonresident person over which it is able to exercise jurisdiction. In particular, a requested party is obligated to provide information concerning resident and nonresident persons if those persons are engaged in business within that jurisdiction, are making investments in that jurisdiction, are required to register in that jurisdiction, or are otherwise subject to the laws or regulations of that jurisdiction.
Article 3
Taxes Covered

1. This Agreement shall apply to all national taxes imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes to which the Agreement shall apply are, in particular:
   (a) In the case of [Country A]: . . .
   (b) In the case of [Country B]: . . .

3. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the [Country A] or [Country B] taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting States in the form of an exchange of letters. The competent authorities of the Contracting States shall notify each other of any substantial changes to the taxation and related information-gathering measures covered by this Agreement.

Article 4
Definitions

For the purposes of this Agreement, unless the context otherwise requires:

1. The term “Contracting State” means [Country A] or [Country B], as the context requires.

2. The term “competent authority” means:
   (a) for [Country A], . . . , and
   (b) for [Country B], . . .

3. The term “person” means a natural person, a company, a partnership, a trust, an estate, a foundation, or any other body or group of persons.

4. The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes by either Contracting State.

5. The term “tax” means any tax covered by this Agreement.

6. The term “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request.
7. The term “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party.

8. The term “information-gathering measures” means judicial, regulatory or administrative procedures enabling a requested party to obtain and provide the information requested.

9. The term “information” means any fact, statement, document, or record in whatever form.

10. The term “tax evasion” means any act intended to defraud the public revenue or to evade or attempt to evade any tax liability.

11. The term “tax avoidance” means any act that is legal under the tax laws of the relevant Contracting State but nevertheless defeats the ostensible purpose of those tax laws, typically because the form of the act is inconsistent with its substance or because the act does not have a substantial business purpose other than the avoidance of tax.

12. The term “publicly traded company” means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be and are readily purchased and sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors.

13. The term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company.

14. The term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties.

15. The term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold and redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold and redeemed “by the public” if the purchase, sale and redemption is not implicitly or explicitly restricted to a limited group of investors and sales and purchases by persons outside a limited group actual occur on a regular basis.
Article 5
Exchange of Information Upon Request

1. The competent authority of the requested party shall provide upon request 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 had occurred in the territory of the requested party.

2. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for information, 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 in the form of depositions of witnesses and authenticated copies of original records.

4. 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 indicate the possible relevance of the information sought by the request:

(a) A statement of the information sought, including its nature and the form in which the requesting party wishes to receive the information from the requested party.

(b) To the extent known, the name and address of the person under examination or investigation.

(c) The purpose for which the information is sought.

(d) To the extent known, the name and address of any person believed to possess or have control over the information requested.

(e) A statement that the request for information is in conformity with this Agreement and with the law and administrative practices of the requesting party and that, if the requested information were within the jurisdiction of the requesting party, then the competent authority of the requesting Party
would be able to obtain the information under the laws of the requesting party or in the normal course of its administrative practices.

A requested party may request additional information from the requesting party that it believes would be helpful to it in complying with a request. No information, other than the information listed above, however, may be required by a requested state as a condition for providing the requested information.

5. 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 act as follows:

(a) It shall confirm receipt of a request for information 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 30 days of receipt of the request.

(b) If the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, it shall explain immediately to the competent authority of the requesting party the reasons for its inability, including an explanation of any obstacles it may have encountered in furnishing the information.

(c) If the competent authority of the requested party intends to decline to provide the information in accordance with the provisions of Article 9 of this Agreement, it shall provide a statement to the competent authority of the requesting party its intent not to comply with the request for information and the basis for its refusal. Unless that statement is provided within 30 days of receipt of the request for information, the rights of the requested party to refuse to supply the information under Article 9 is waived.

Article 6
Automatic Exchange of Information

1. With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, the Contracting States shall exchange automatically the information referred to in Article 1.

2. In particular, each Contracting State shall establish procedures for the automatic exchange of information on:
(a) the formation of a legal entity or body, including corporations, partnerships, or trusts, in that Contracting State that is controlled by persons resident in, or citizens of, the Other Contracting State;

(b) the payment of dividends, interest, rents, royalties, or other periodical income paid by a resident of a Contracting State to a resident or citizen of the other Contracting State.

Exchanges under this paragraph shall occur annually or at such shorter intervals as agreed to by the competent authorities.

3. The Contracting States are obligated under this Article to provide information in electronic form if such action is necessary for an effective exchange of information.

Article 7
Spontaneous Exchange of Information

1. A Contracting State shall, without prior request, forward to the Other Contracting State information of which it has knowledge in the following circumstances:

   (a) The first-mentioned Contracting State has grounds for supposing that there may be a loss of tax revenue in the Other Contracting State as a result of tax evasion;

   (b) Business dealings between a person acting within the first-mentioned Contracting State and a taxpayer in the Other Contracting State are conducted in such a way that tax avoidance is likely to result in the Other Contracting State.

2. Each Contracting State shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to the Other Contracting State.

Article 8
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 attend a tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorized to carry out the examination, and the procedures and conditions required by the requested party for conducting the examination. The requested party shall make all decisions regarding the manner of conducting the examination.

Article 9
Possibility of Declining a Request

1. The competent authority of the requested party may decline a request for information or other assistance:

   (a) whenever the request is not made in conformity with this Agreement; or

   (b) whenever the disclosure of the information requested constitutes a state secret or otherwise would be contrary to the public policy of the requested party and would threaten its vital interests.

   A public policy inconsistent with the obligations established under Article 11 of this Agreement shall not constitute a ground for declining a request for information under this paragraph.

2. This Agreement shall not impose upon a Contracting State any obligation to provide any trade, business, industrial, commercial, or professional secret or any secret trade process if that trade or other secret information has
significant commercial value. Financial information, including books and records, does not by its nature constitute a trade, business or other secret within the meaning of this paragraph. In addition, a Contracting State may not decline to provide information under this paragraph merely because the information is included in a document that contains information protected from disclosure under this paragraph. Information held by financial institutions or that the requested party must be able to provide under Article 11, paragraph 2, shall not be treated as a secret or trade process merely because it meets the criteria in that paragraph.

3. This Agreement shall not impose on a Contracting State an obligation to obtain or provide information which would reveal a confidential communication between an attorney, solicitor, or other admitted legal representative and that person’s client when the communication:

(a) is protected from disclosure under the laws of the Contracting State in which the advice was given;

(b) was produced either for the purpose of seeking or providing legal advice or for the purpose of use in existing or contemplated legal proceedings;

(c) is unrelated to the status of the legal representative as an agent, fiduciary, or nominee;

The protection for a confidential communication between a client and a legal representative does not apply to any documents that were delivered to the legal representative to avoid disclosure. In addition, documents or other items held by a legal representative with the intention of furthering a criminal purpose are not protected from disclosure. When the context permits, the protection for a confidential communication should be interpreted narrowly so as not to frustrate an effective exchange of information.

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 under its own laws for the purpose of the enforcement of its own tax laws or in response to a valid request from the requested party under this Agreement.
5. In no case shall the provisions of this article be construed to permit a requested party to decline to supply information on the ground that the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because the information relates to ownership interests in a person.

6. If information is requested by a requesting party in accordance with this Agreement, the requested party shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own purposes. In no case shall a requested party be permitted to decline to supply information because it has no domestic interest in such information.

7. A requested party may fulfill a request for information under this Agreement even if it could invoke this Article to decline that request. If the requested party declines to exercise its right under this Article and supplies the requested information, the information exchanged remains within the framework of the Agreement and is subject, for example, to the confidentiality requirements of Article 10.

**Article 10**

**Confidentiality**

1. Any information received under Article 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State.

2. If the information provided was originally regarded as secret in the state of the requested party, it shall be disclosed only to persons or authorities (including judicial, administrative, and oversight authorities) officially concerned with the purposes specified in Article 1. It may be 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 other judicial proceedings.

3. Information received under Article 1 may be used for a purpose other than for the purposes stated in Article 1 only with the prior consent of the requested party. That consent shall not be withheld unreasonably.

4. Information received under Article 1 may be disclosed to a person not specified in subparagraph 2, above, only with the prior consent of the requested party. That consent shall not be withheld unreasonably.
1. Each Contracting State shall enact any legislation and establish any administrative practices necessary to comply with, and give effect to, the terms of this Agreement.

2. In particular, each Contracting State shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request the following information:

   (a) Information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity.

   (b) Information regarding the nominal and beneficial ownership of companies, partnerships, trusts, estates, foundations, “Anstalten” and other persons, including all persons in an ownership chain or within a common ownership group.

   (3) The information specified in paragraph 2, above, shall include:

      (i) In the case of trusts, information on settlors, trustees, and direct and indirect beneficiaries, and persons having the ability to direct the way assets of the trust are managed, held, or distributed.

      (ii) In the case of foundations, information on founders, members of the foundation council, beneficiaries, and persons having the ability to direct the way assets of the foundation are managed, held, or distributed.

      (iii) In the case of collective investment funds, information on shares, units and other interests;

(4) This Agreement does not create an obligation on the Contracting Parties to enact legislation or establish administrative procedures that would allow it to obtain or provide ownership information with respect to companies or public collective investment funds that are widely held and are publicly traded on a recognized stock exchange.
Article 12
Safeguards

Rights and safeguards secured to persons by the laws or established administrative practices of the requested party shall not be applied to the extent that these laws and practices act as impediments to an effective exchange of information under this Agreement.

Article 13
Administration Costs or Difficulties

1. Unless otherwise agreed to by the competent authorities:
   
   (a) Ordinary costs incurred in providing assistance shall be borne by the requested party;
   
   (b) Extraordinary direct costs, including litigating expenses, incurred in providing assistance shall be borne by the requesting party.

2. In the event that compliance with the obligations under this Agreement create undue difficulties for either Contracting State, as a result either of the number or the complexity of requests, the respective competent authorities shall consult with a view to resolving the difficulties under Article 14.

Article 14
Mutual Agreement Procedure

1. Should difficulties arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavor to resolve the difficulties by mutual agreement.

2. The competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, 7 and 8.

3. The competent authorities of the Contracting Parties may communicate with each other directly, rather than through diplomatic channels, for purposes of reaching agreement under this Article.

4. The competent authorities of the Contracting Parties may agree to pursue other forms of dispute resolution, including mediation and arbitration.
**Article 15**  
**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.

2. Upon entry into force, this Agreement shall have effect with respect to all civil and criminal matters covered in Article 1 beginning on 1 January 20xx.

**Article 16**  
**Termination**

1. This Agreement shall remain in force until terminated by either Contracting State.

2. Either Contracting State may terminate this Agreement by giving notice of termination in writing through diplomatic channels or by letter to the competent authority of the other Contracting Party.

3. A notice of termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of that notice by the other Contracting State.

3. A Contracting State after termination of this Agreement shall remain bound by the provisions of Article 10 (Confidentiality) with respect to any information obtained under this Agreement.

*In witness whereof, the undersigned, being duly authorized in that behalf by the respective parties, have signed this Agreement.*

Done at [...], in duplicate, this [...] day of [...].

**For the Government of [Country A]:**

**For the Government of [Country B]:**