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INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(SINGAPORE — BERMUDA)
(AGREEMENT FOR THE EXCHANGE OF INFORMATION
ON TAX MATTERS)
ORDER 2012

WHEREAS it is provided by section 105BA of the Income Tax Act that if the Minister by order declares that an arrangement specified in the order has been made with the government of any country outside Singapore for the exchange of information concerning the tax positions of persons, and that it is expedient that that arrangement should have effect, then the arrangement shall have effect notwithstanding anything in any written law:

AND WHEREAS it is provided by section 105C of the Income Tax Act that the Minister may by order declare an avoidance of double taxation arrangement or an exchange of information arrangement as a prescribed arrangement for the purposes of Part XXA of the Act:

AND WHEREAS by an Agreement dated 29th October 2012 between the Government of the Republic of Singapore and the Government of Bermuda, arrangements were made to facilitate the exchange of information on tax matters covered by the Agreement:

NOW, THEREFORE, it is hereby declared by the Minister for Finance —

- (a) that the arrangements specified in the Schedule have been made with the Government of Bermuda for the exchange of information concerning the tax positions of persons;
- (b) that it is expedient that those arrangements should have effect notwithstanding anything in any written law; and

- (c) that those arrangements specified in the Schedule are a prescribed arrangement for the purposes of Part XXA of the Act.

THE SCHEDULE

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF BERMUDA

(AS AUTHORIZED BY THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND)

FOR

THE EXCHANGE OF INFORMATION ON TAX MATTERS

The Government of the Republic of Singapore and the Government of Bermuda,

Desiring to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

ARTICLE 1

OBJECTIVE AND SCOPE OF THE AGREEMENT

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

THE SCHEDULE — *continued*

ARTICLE 2

JURISDICTION

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are:

(a) in Singapore:

- Income Tax;
- Property Tax;
- Goods and Services Tax;
- Stamp Duties.

(b) in Bermuda:

- Direct taxes of every kind and description.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4

DEFINITION

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

(a) the term “Singapore” means the Republic of Singapore and, when used in a geographical sense, includes its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which

THE SCHEDULE — *continued*

Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

- (b) the term “Bermuda” means the islands of Bermuda;
- (c) the term “Contracting Party” means Singapore or Bermuda as the context requires;
- (d) the term “competent authority” means
 - (i) in Singapore, the Minister for Finance or his authorised representative;
 - (ii) in Bermuda, the Minister of Finance or his authorised representative;
- (e) the term “person” includes an individual, a company and any other body of persons;
- (f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (k) the term “tax” means any tax to which the Agreement applies;
- (l) the term “applicant Party” means the Contracting Party requesting information;
- (m) the term “requested Party” means the Contracting Party requested to provide information;

THE SCHEDULE — *continued*

- (n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (o) the term “information” means any fact, statement or record in any form whatever.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this

THE SCHEDULE — *continued*

Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the taxable period with respect to which the information is requested;
- (d) the tax purpose for which the information is sought;
- (e) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (g) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (h) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant 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 applicant Party and shall notify the competent authority of the applicant party of deficiencies in the request, if any, within 60 days of the receipt of the request.

THE SCHEDULE — *continued*

- (b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 6

POSSIBILITY OF DECLINING A REQUEST

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. This Agreement shall not impose on a Contracting Party an obligation to provide information held that is subject to legal privilege.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

ARTICLE 7

CONFIDENTIALITY

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or

THE SCHEDULE — *continued*

prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction.

ARTICLE 8

LANGUAGE

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

ARTICLE 9

IMPLEMENTATION LEGISLATION

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

ARTICLE 10

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Article 5.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 11

ENTRY INTO FORCE

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws and each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement.

2. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect with respect to requests made on or

THE SCHEDULE — *continued*

after the date of entry into force to information for taxes relating to taxable periods beginning on or after 1 January of the calendar year next following the date on which the Agreement enters into force; or where there is no taxable period, for all charges to tax arising on or after 1 January of the calendar year next following the date on which the Agreement enters into force.

ARTICLE 12

TERMINATION

1. Either Contracting Party may terminate the Agreement by serving a notice of termination through diplomatic channels.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.
3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at London on this 29th day of October 2012 in the English language.

FOR THE GOVERNMENT OF
THE REPUBLIC OF SINGAPORE

FOR THE GOVERNMENT OF
BERMUDA

T Jasudasen

Wayne L. Brown

Made this 29th day of November 2012.

LIM SOO HOON
*Permanent Secretary
(Finance) (Performance),
Ministry of Finance,
Singapore.*

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