

**AGREEMENT BETWEEN THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF THE PRINCIPALITY OF  
MONACO FOR THE EXCHANGE OF INFORMATION  
RELATING TO TAX MATTERS**

**Whereas** the government of the United States of America and the government of the  
Principality of Monaco ("the Parties") wish to establish the terms and conditions  
governing the exchange of information relating to taxes;

**Now, therefore,** the Parties have agreed as follows:

## **Article 1**

### **Scope of the Agreement**

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of tax matters in relation to such persons.

## **Article 2**

### **Jurisdiction**

Information shall be provided in accordance with this agreement by the competent authority of the requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Party. However, a requested Party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities.

### **Article 3**

#### **Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the Parties:
  - (a) in the case of the Principality of Monaco: profits tax; and
  - (b) in the case of the United States of America: all federal taxes.
  
2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

### **Article 4**

#### **Definitions**

1. In this Agreement:
  - (a) "competent authority" means, in the case of the Principality of Monaco, the Government Councilor for Finances and Economy or his authorised representative and in case of the United States of America, the Secretary of the Treasury or his delegate;
  - (b) "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the

information requested;

(c) "information" means any fact, statement, document or record in whatever form;

(d) "person" means an individual, a company, or any other body or group of persons;

(e) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

(g) "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) "collective investment scheme" means any pooled investment vehicle, irrespective of legal form;

(i) "public collective investment scheme" means any collective investment scheme in which the purchase, sale or redemption of units, shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

(j) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;

(k) "requested Party" means the Party to this Agreement which is requested

to provide or has provided information in response to a request;

(l) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and

(m) "tax" means any tax covered by this Agreement and does not include customs duties.

2. For purposes of determining the geographic area within which jurisdiction to compel production of information may be exercised:

(a) the term "Principality of Monaco" means the Principality of Monaco; and

(b) the term "United States of America" means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other U.S. possession or territory.

3. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws 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 by the competent authority of the requesting Party information for the purposes referred

to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party. The competent authority of the requesting Party shall make a request for information pursuant to this Article only if it would not be able to obtain the information requested by other means, except where that would give rise to disproportionate difficulties.

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 use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes. Privileges under the laws and practices of the requesting Party shall not apply in the execution of a request by the requested Party and the resolution of such matters shall be solely the responsibility of the requesting Party.

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 it has the authority, for the purposes referred to in Article 1 and subject to Article 2, to obtain and provide, through its competent authority and upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of collective investment schemes, information on shares, units and other interests; in the case of foundations, information on founders, members of foundation councils and beneficiaries; and in the case of trusts, information on settlors, trustees, protectors and beneficiaries. However, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest degree of specificity possible and shall specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) grounds for believing that the information requested is foreseeably

relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;

(f) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;

(h) a statement that the request is in conformity with the law and administrative practice of the requesting Party and the information would be obtainable by the requesting Party under its laws or in the normal course of administrative practice in similar circumstances, in response to a valid request from the requested Party under this Agreement; and

(i) a statement that the requesting Party has pursued all means available in its own jurisdiction to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

## **Article 6**

### **Tax Examinations Abroad**

1. With reasonable notice, the requested Party may allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other 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 intended meeting with the individuals concerned. At the option of the requested Party, an official of the requested Party may attend such meeting.
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 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 the 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 to obtain the information, 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 public policy.
  
2. This Agreement shall not impose upon a Party any obligation:
  - (a) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor, or other admitted legal representative where such communications are:
    - (i) produced for the purposes of seeking or providing legal advice or
    - (ii) produced for the purposes of use in existing or contemplated legal proceedings;
  - (b) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4(a) of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or

(c) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Party under paragraph 4 of Article 5 of this Agreement.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain and provide information which the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice if the requested information were within the jurisdiction of the requesting Party.
5. The statute of limitations of the requesting Party pertaining to the taxes described in paragraph 1 of Article 3 of this Agreement shall govern a request for information. The expiration of a statute of limitations for taxes of the requested Party shall not preclude the requested Party from obtaining and providing the requested information.
6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested Party if it is more burdensome with respect to a national of the requested Party than with respect to a national of the requesting Party in the same

circumstances. For purposes of the preceding sentence, a national of the requesting Party who is subject to tax on worldwide income is not in the same circumstances as a national of the requested Party who is not subject to tax on worldwide income. The provisions of this paragraph shall not be construed so as to prevent the exchange of information with respect to the taxes imposed by the United States on branch profits or on the premium income of non-resident insurers or foreign insurance companies or any similar such taxes imposed by the Principality of Monaco in the future.

## **Article 8**

### **Confidentiality**

All information received by the requesting Party shall be kept confidential. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 or with the oversight thereof, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions. Such information may not be used for any other purpose, or disclosed to any other jurisdiction, without the express written consent of the competent authority of the requested Party. Information received by the requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential by the requested Party.

## **Article 9**

### **Costs**

Ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance shall be borne by the requesting Party.

## **Article 10**

### **Dialogue on Further Cooperation**

The Parties shall continue the dialogue on the possibilities for further cooperation in the taxation area. The Parties have the right to submit proposals for discussion and to ask for a meeting with the other Party to address such proposals. In the context of such discussions the Parties may inform each other of possible changes to their internal tax legislation and they may take into account any such changes.

## **Article 11**

### **Mutual Agreement Procedure**

1. 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.

2. In addition to the mutual agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used to implement Articles 5, 6 and 9, and may also agree to such additional forms for the exchange of information as shall promote the most effective use of the information.

3. The Parties may also agree on other forms of dispute resolution, should this become necessary.

## **Article 12**

### **Entry into Force**

This Agreement shall enter into force when each Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon entry into force, it shall have effect for requests made on or after the later of January 1, 2010, or the date of entry into force, with regard to tax years beginning on or after January 1, 2009.

## **Article 13**

### **Termination**

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

2. Either Party may after the expiration of two years from the date of its entry into force 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 the notice of termination by the other Party.

3. If the Agreement is terminated the Parties 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 the Agreement.

Done at Washington, this 8<sup>th</sup> day of September, 2009, in duplicate, in the English and French languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:**



**FOR THE GOVERNMENT OF THE  
PRINCIPALITY OF MONACO:**

