COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS NO. 13 OF 2015.

ORDER

MADE by the Minister under section 3(3) of the Tax Information Exchange Act (Chap. 67:02).

(Gazetted July 16th, 2015.)

1. This Order may be cited as the -

TAX INFORMATION EXCHANGE (AMENDMENT) ORDER, 2015.

2. The Schedule to the Act is amended by inserting the following agreements set out in the Schedule -

(a) “Agreement between the Government of Ireland and the Government of the Commonwealth of Dominica on the Exchange of Information with respect to taxes and tax matters;”

(b) “Agreement between the Government of the Republic of Poland and the Government of the Commonwealth of Dominica on the Exchange of Information with respect to taxes and tax matters;”

(c) “Agreement between the Government of the Republic of South Africa and the Government of the Commonwealth of Dominica on the Exchange of Information with respect to taxes and tax matters.”
AGREEMENT BETWEEN
THE REPUBLIC OF POLAND
AND
THE COMMONWEALTH OF DOMINICA
FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

Whereas the Republic of Poland and the Commonwealth of Dominica ("the Contracting Parties") recognize the need for cooperation and the exchange of information with respect to tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes and tax matters;

NOW, therefore, the Contracting Parties, desiring to facilitate the exchange information with respect to taxes and tax matters,

Have agreed as follows:

Article 1
Object and Scope of the Agreement

The Contracting Parties, through their competent authorities, 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 and tax matters 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 of tax matters or prosecution of criminal 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 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

Article 2

Jurisdiction

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 territorial jurisdiction.

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:

(a) in respect of Poland:

   (i) the personal income tax;

   (ii) the corporate income tax;

   (iii) tax on goods and service;

(b) in respect of Dominica, taxes of every kind and description, including customs duties, imposed by the laws of Dominica at the date of signature of this Agreement;
2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes in their laws which may effect the obligations of that Contracting Party pursuant to this Agreement.

Article 4
Definitions

1. In this Agreement, unless otherwise defined, the term:

(a) “Poland” means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;

(b) “Dominica” means the Commonwealth of Dominica and, when used in a geographical sense, means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights;

(c) “Contracting Party” means Poland or Dominica, as the context requires;

(d) “competent authority” means:
(i) in respect of Poland, the Minister of Finance or his authorized representative;

(ii) in respect of Dominica, the Minister for Finance or the Minister’s authorized representative;

(e) “person” includes an individual, a company and any other body of persons;

(f) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(g) “publicly traded company” means any company whose principal class of shares is listed on a recognized 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) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

(i) “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

(j) “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 and such purchase, sale, or redemption is not implicitly or explicitly restricted to a limited group of investors;
(k) “tax” means any tax to which the Agreement applies;

(l) “applicant Party” means the Contracting Party requesting information;

(m) “requested Party” means the Contracting Party requested to provide information;

(n) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

(o) “information” means any fact, statement or record in any form whatever;

(p) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party and includes all cases where a person has been notified that proceedings concerning those matters have been initiated against that person;

(r) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

2. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting 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 applicant Party information for the purposes referred to in Article 1. Such information shall be provided 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 had occurred in the territorial jurisdiction 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, that Party shall, at its own discretion, use the information gathering measures it considers relevant to provide the requesting 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 the 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, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) information regarding the legal and beneficial
ownership of companies, partnerships, public collective investment schemes, trusts, foundations and other persons, including information on all such persons in an ownership chain, in particular:

(i) in case of public collective investment funds or schemes, information on shares, units and other interests;

(ii) in case of foundations, information on founders, members of the foundation council and beneficiaries;

(iii) in case of trusts, information on settlors, trustees, protectors and beneficiaries;

(iv) in case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii).

5. Notwithstanding the preceding paragraphs, this Agreement does not create any obligation for a Contracting Party 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.

6. Any request for information shall be formulated with the greatest possible detail 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 applicant Party would prefer to receive it;

(d) the tax purpose for which the information is sought;

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

(f) 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;

(g) 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;

(h) grounds for believing that the information requested is held or is in the possession or control of a person within the territorial jurisdiction of the requested Party.

7. 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 the request in writing to the competent authority of the applicant Party and
shall notify the competent authority of the applicant Party of any deficiencies in the request within 60 days of receipt of the request, and

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

Article 6
Tax Examinations Abroad

1. The competent authority of the requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the applicant Party allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the prior consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of 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 applicant 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 the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

Article 7
Possibility of Declining a Request

1. The requested party may decline a request for information where:

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

   (b) the applicant 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) the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose on a Contracting Party the obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation 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:
(a) produced for the purposes of seeking or providing legal advice; or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.

5. The requested Party shall not be required to obtain and provide information that the applicant Party would not be able to obtain under its laws for the purposes of the administration or enforcement of its own tax laws.

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 citizen or national of the requested Party as compared with a citizen or national of the applicant Party in the same circumstances.

Article 8
Confidentiality

1. Any information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

2. Information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, 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.

3. Information may not be used for any purpose other than
for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. The information provided to an applicant Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9
Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party. Such ordinary costs will cover normal internal administration costs and any minor external costs such as the costs of couriers. The respective competent authorities shall consult periodically with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party if the costs of providing information with respect to a specific request are expected to be significant.

Article 10
Language

Requests for assistance, the responses thereto and any other written communication between the competent authorities shall be drawn up in English. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall jointly 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 Articles 5, 6, and 9.

3. The Contracting Parties may also mutually determine to use other forms of dispute resolution should this become necessary.

4. Formal communications, including requests for information, made in connection with or pursuant to the provision of this Agreement will be in writing directly to the competent authority of the other Contracting Party at such address as may be notified by one Contracting Party to the other. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the aforementioned competent authorities or their authorized representatives.

**Article 12**

**Entry into Force**

Each of the Contracting Parties shall notify the other in writing through the diplomatic channel of the completion of the necessary internal procedures required by its law for the bringing into force of this Agreement.

This Agreement shall enter into force after a period of two months following the date of receiving the later of these notifications. Upon entry into force, it shall have effect:

(a) with respect to criminal matters on that date; and

(b) for all other matters covered in Article 1 on the date of entry into force of this Agreement, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.
Article 13
Amendment

1. This Agreement may be amended at the request of either contracting party.

2. Each of the Contracting Parties, having mutually agreed to amend this Agreement, shall notify the other in writing through the diplomatic channel of the completion of the necessary internal procedures required by its law for bringing into force any amendment to this Agreement. The amendment shall enter into force one month following the date of receiving the later of the notifications.

Article 14
Termination

1. Either Contracting party may terminate this Agreement by serving a notice of termination in writing through the diplomatic channel.

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. All requests received by the Contracting Parties up to date of receipt of notice of termination will be dealt in accordance with the terms of this Agreement.

4. Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.
AGREEMENT

BETWEEN

THE GOVERNMENT OF IRELAND

AND

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA

ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

Whereas the Government of Ireland and the Government of the Commonwealth of Dominica ("the Contracting Parties") recognise the need for cooperation and the exchange of information with respect to tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes and tax matters;

NOW, therefore, the Contracting Parties desiring to conclude an Agreement to facilitate the exchange of information with respect to taxes and tax matters have agreed as follows:

ARTICLE 1

SCOPE OF AGREEMENT

1. The Contracting Parties, through their competent authorities, 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 and tax matters 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 8.

2. 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.

ARTICLE 2

JURISDICTION

1. To enable this Agreement to be implemented, 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 in possession or control of, a resident or national of a Contracting Party.

2. 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 territorial jurisdiction.

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the Contracting Parties at the date of signature of the Agreement.

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

DEFINITIONS

1. In this Agreement, unless otherwise defined-

(a) the term “Commonwealth of Dominica” means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights;

(b) the term “Ireland” means Ireland and includes any area outside the territorial waters of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;

(c) the term “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
(d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(e) the term “competent authority” means

(i) in respect of the Commonwealth of Dominica, the Minister for Finance or the Minister’s authorized representative and,

(ii) in respect of Ireland, the Revenue Commissioners or their authorised representative;

(f) the term “Contracting Party” means the Commonwealth of Dominica or Ireland as the context requires;

(g) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other laws;

(h) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;

(i) the term “information” means any fact, statement, document or record in any form whatever;

(j) the term “information gathering measures” means laws, regulations and administrative or judicial procedures enabling a Contracting Party to obtain and provide the requested information;

(k) the term “national” means-
(i) in respect of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust, estate, association or any other entity deriving its status as such from the laws in force in the Commonwealth of Dominica;

(ii) in relation to Ireland, any individual possessing citizenship of Ireland and any legal person, partnership, association or other entity deriving its status as such from the laws in force in Ireland;

(l) the term “person” includes an individual, a company, and any other body of persons;

(m) 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;

(n) 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;

(o) 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 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 restricted to a limited group of investors;

(p) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

(q) the term “Requested Party” means the Contracting Party that has been requested to provide or that has provided information in response to a request;

(r) the term “Requesting Party” means the Contracting Party requesting information or that has received information from the Requested Party;

(s) the term “tax” means any tax covered by this Agreement.

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

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request in writing by the competent authority of the Requesting Party information for the purposes referred to in Article 1. Such information shall be provided 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 territorial jurisdiction of the Requested Party.
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 the information, the Requested Party shall use, all relevant information gathering measures to provide the Requesting 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 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 Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:

   (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 legal and beneficial 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:

      (i) in the case of trusts, information on settlors, trustees, protectors, and beneficiaries;

      (ii) in the case of foundations, information on founders, members of the foundation council and beneficiaries;

      (iii) in the case of entities that are neither trusts
nor foundations, equivalent information to the information in subparagraphs (i) and (ii) of this paragraph.

5. Notwithstanding the preceding paragraphs, this 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.

6. 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 foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) the period for which the information is requested;

(c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive that information;

(d) the tax purposes for which the information is sought;

(e) the reasons for believing that the information requested is foreseeable relevant to the tax administration and enforcement of the tax laws of the Requesting Party with respect to the person identified as per subparagraph (a) of this paragraph;
(f) grounds for believing that the information requested is held or is in the possession or control of a person within the territorial 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 this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information was 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 administrative practice;

(i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. 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 confirm the 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.

8. 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, 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 in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal to provide the requested information.

ARTICLE 6

TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. The Requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the Requesting Party, 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 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, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

3. If the request referred to in Paragraph 2 of this Article 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 the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.
ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline a request for information where:

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

   (b) 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 difficulties; or

   (c) the disclosure of the information requested would be contrary to public policy.

2. The provisions of this Agreement shall not impose upon a Contracting Party, any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, the information described in Paragraph 4 of Article 5 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 the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister or other admitted legal representatives 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.
4. 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.

5. The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws.

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 of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. All information received by a Contracting Party under this Agreement shall be kept confidential.

2. Such information may be disclosed only to persons and authorities (including judicial and administrative authorities) in the jurisdiction of the Contracting Party concerned with the purposes specified in Article 1 of this Agreement and shall only be used by such persons or authorities for such purposes. For such purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Information provided to a Requesting Party under this Agreement shall not be disclosed to any other person or entity or
authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

ARTICLE 9

COSTS

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

ARTICLE 10

IMPLEMENTATION LEGISLATION

The Contracting Parties shall take all necessary steps to give effect to the terms of this Agreement.

ARTICLE 11

LANGUAGE

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

ARTICLE 12

MUTUAL AGREEMENT PROCEDURE

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

2. In addition to the efforts referred to in Paragraph 1 of this
Article, the competent authorities of the Contracting Parties may mutually agree the procedures to be used under Articles 5, 6 and 9.

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

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

ARTICLE 13
ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing of the completion of their necessary internal procedures required by their respective laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of the notifications. Upon entry into force, it shall have effect:

(a) with respect to criminal tax matters on that date; and

(b) for all other matters covered in Article 1 on the date of entry into force of this Agreement, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 14
TERMINATION

1. Either Contracting Party may terminate this Agreement by serving a notice of termination in writing through the diplomatic channel.
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. Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

PREAMBLE

WHEREAS the Government of the Commonwealth of Dominica and the Government of the Republic of South Africa (“the Parties”) recognise the need for co-operation and the exchange of information with respect to taxes and tax matters;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and tax matters;

DESIRING THEREFORE the Parties in concluding the
following Agreement which contains obligations on the part of the Parties only;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

SCOPE OF THE AGREEMENT

The Parties through their competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes and tax matters 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 criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavors to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2

JURISDICTION

1. 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 territorial jurisdiction.

2. Information shall be provided in accordance with this Agreement by a requested Party without regard to the residence or the nationality of the person to whom the information relates,
or by the residence or nationality of the person in control or possession of the information requested.

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the Parties at the date of signature of the Agreement.

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 substantial changes to the taxation and information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 4

GENERAL DEFINITIONS

1. In this Agreement:

(a) the term “Commonwealth of Dominica” means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights;

(b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area
outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;

(c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(d) the term “competent authority” means:

(i) in respect of the Commonwealth of Dominica, the Minister for Finance or an authorised representative of the Minister; and

(ii) in respect of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;

(e) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

(f) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;

(g) the term “information” means any fact, statement, document or record in whatever form;

(h) the term “information gathering measures” means laws, regulations and administrative or judicial
procedures enabling a requested Party to obtain and provide the information requested;

(i) the term “person” includes a natural person, a legal person or any other body or group of persons;

(j) 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;

(k) 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;

(l) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

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

(n) the term “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;

(o) the term “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party; and
(p) the term “tax” means any tax covered by this Agreement.

2. 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 in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be provided 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 had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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, at its own discretion, use the information gathering measures it considers relevant to provide the requesting 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 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, subject to the terms of Article 1, 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;

(b) (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;

(ii) in the case of trusts, information on settlors, trustees, protectors, and beneficiaries.

5. This Agreement does not create an obligation for a Party 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.

6. Any request for information shall be formulated with the greatest detail possible in specifying 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
(d) the tax purpose for which the information is sought;

(e) the reasons 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 territorial jurisdiction of the requested Party or is in the possession of 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 laws and administrative practices of the requesting Party, that if the requested information was 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 administrative practice and that it is in conformity with this Agreement;

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

7. The competent authority of the requested Party shall
acknowledge in writing receipt of a request 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.

8. 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, 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 in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal to provide the requested information.

ARTICLE 6

TAX EXAMINATIONS ABROAD

1. The requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, 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.

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 at the appropriate part of 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 with respect to the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline a request for information:

   (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 of the requested Party.

2. This Agreement shall not impose upon a requested Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described 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 requested Party the obligation 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:

(a) produced for the purposes of seeking or providing legal advice or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.

5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

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.

ARTICLE 8

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, 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.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

ARTICLE 9

COSTS

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 10

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 agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

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

4. The Parties may also agree to use other forms of dispute resolution should this become necessary.

ARTICLE 11

ENTRY INTO FORCE

1. Each of the Parties shall notify the other in writing through the diplomatic channel of the completion of all necessary formalities required by its law for the bringing into force of this Agreement.

2. This Agreement shall enter into force 30 days following the date of receipt of the later of these notifications. Upon the date of entry into force, it shall have effect:
   (a) for criminal tax matters on that date; and
   (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 12

AMENDMENT

1. At the request of either Party, this Agreement may be amended based on mutual agreement and the Parties may communicate with each other directly for that purpose.
2. Amendments shall enter into force in accordance with Article 11.

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 through the diplomatic channel. 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. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. Notwithstanding the termination, the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

Made this 16th day of July, 2015.

ROOSEVELT SKERRIT
Minister for Finance

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