

BELIZE:

STATUTORY INSTRUMENT

No. 112 of 2010

ORDER made by the Minister of Finance in exercise of the powers conferred upon him by section 95A of the Income and Business Tax Act, Chapter 55 of Laws of Belize, Revised Edition 2000-2003, as amended by the Income and Business Tax (Amendment) Act, 2009 (No. 6 of 2009), and all other powers thereunto him enabling.

(Gazetted 4th December, 2010.)

WHEREAS, section 95A(1) of the Income and Business Tax Act, Chapter 55 of the Laws of Belize, Revised Edition 2000-2003, as amended by the Income and Business Tax (Amendment) Act, 2009 (No. 6 of 2009) [hereinafter referred to as “**the Act**”] provides that the Minister [of Finance] may enter into Tax Information Exchange Agreements with the government of any country or territory outside Belize with a view to applying international standards on transparency and effective exchange of information relating to tax matters;

AND WHEREAS, subsection (2) of section 95A of the Act further provides that every such agreement as aforesaid shall be incorporated in an Order which shall be published in the *Gazette* as a statutory instrument, and upon such publication, the Order shall have the force of law in Belize notwithstanding anything in this or any other enactment, and the restrictions contained in section 4 of this Act on the disclosure of information shall not apply with respect to a request for information pursuant to such agreement;

AND WHEREAS, the Minister has entered into a Tax Information Exchange Agreement with the Government of Portugal,

NOW, THEREFORE, IT IS HEREBY ordered as follows:-

Short title.

1. This Order may be cited as the

**TAX INFORMATION EXCHANGE
AGREEMENT (BELIZE/PORTUGAL)
ORDER, 2010.**

Interpretation.

2. In this Order, unless the context otherwise requires—

“**Agreement**” means the Agreement between the Government of Belize and the Government of the Portuguese Republic for the Exchange of Information Relating to Tax Matters, signed on the 22nd October 2010, as set out in the Schedule hereto;

Schedule.

“**authorised representative**” of the Minister means the Financial Secretary;

“**competent authority**” means in the case of Belize, the Minister or the Financial Secretary; and in the case of Portugal, the Minister of Finance, the Director General of Taxation or their authorised representative;

“**days**” means calendar days;

“**IFS Practitioner**” means any person or entity licensed by the International Financial Services Commission to carry on the business of ‘international financial services’ as that term is defined in section 2 of the International Financial Services Commission Act;

CAP. 272.

“financial institution” means a bank or financial institution as defined in the Banks and Financial Institution Act or the International Banking Act, and includes brokerage firms and insurance companies;

CAP. 263.

CAP. 267.

“Minister” means the Minister of Finance;

“reporting entity” shall have the meaning assigned to it in section 2 of the Money Laundering and Terrorism (Prevention) Act, 2008;

No. 18/2008.

“supervisory authority” shall have the meaning assigned to it in section 2 of the Money Laundering and Terrorism (Prevention) Act, 2008;

No. 18/2008.

3. For the purpose of complying with a request for information pursuant to the Agreement, the Financial Secretary shall have power to obtain and provide all such information, including (without limitation):

Power of the Financial Secretary to obtain and provide information.

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

(b) information regarding the ownership of companies, partnerships, trusts and foundations including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

4. (1) Where the Financial Secretary is satisfied that a request for information from the competent authority of the Portuguese Republic falls within the terms of the Agreement, he may under his hand require any bank,

Duty to supplying information to the Financial Secretary.

financial institution, reporting entity, supervisory authority, IFS Practitioner, Trust Agent, Registered Agent of Foundations, Registrar of (local) Companies, Registrar of International Business Companies, Registrars of domestic and International Trusts, Registrar of Foundations, Registrar of Limited Liability Partnerships, Supervisor of (domestic) Insurance, Supervisor of International Insurance, taxing authority, public statutory corporations, public officers, or any other person, who the Financial Secretary believes may have relevant information, to furnish such information or produce such document as may be required to comply with the request for information.

(2) Every person who is required by the Financial Secretary to provide information or produce documents pursuant to this Order shall provide the requisite information or documents as soon as possible but no later than thirty (30) days from the date of the request for information.

(3) Every person who refuses or fails to supply such information or documents to the Financial Secretary, or wilfully supplies false or misleading information, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and term of imprisonment.

(4) No restrictions on the disclosure of information contained in any other law shall apply to a request for information pursuant to the Agreement and no suit for breach of confidentiality or other such action shall lie against any person who discloses information, produces documents or renders other assistance in compliance with a request for information under this Order.

Commencement.

5. This Order shall come into force on the 15th day of December, 2010.

MADE by the Minister of Finance this 26th day of November, 2010.

A handwritten signature in black ink, appearing to read 'Dean O. Barrow', with a large, sweeping flourish that loops back over the name.

(DEAN O. BARROW)
Minister of Finance

SCHEDULE

[Paragraph 2]

**AGREEMENT BETWEEN BELIZE AND THE
PORTUGUESE REPUBLIC FOR THE EXCHANGE OF
INFORMATION RELATING TO TAX MATTERS**

Belize and The Portuguese Republic hereinafter referred to as “Parties”,
Desiring to facilitate the exchange of information with respect to taxes
Have agreed as follows:

Article 1
SCOPE OF THE AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Party concerning taxes covered by this Agreement;
- b) 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 criminal tax matters; and
- c) Be treated as confidential as set forth in this Agreement.

Article 2
JURISDICTION

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

Article 3
TAXES COVERED

1. This Agreement shall apply to the following taxes:
 - a) In respect of Portugal:
 - i. Personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
 - ii. Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC);
 - iii. Local surtax on corporate income tax (Derrama);
 - iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas).
 - b) In respect of Belize:
 - i. The income tax (including surtax or surcharge);
 - ii. The business tax;
 - iii. The general sales tax.
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 if the Parties so agree. The competent authorities of the 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. For the purposes of this Agreement, unless otherwise defined:
 - a) The term “Portugal” when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the International Law and the Portuguese Legislation;
 - b) The term “Belize” means the land and sea areas as defined in Schedule 1 to the Belize Constitution, including the territorial waters and any other area in the sea and in the air within which Belize, in accordance with the international law, exercises sovereign rights or its jurisdiction;
 - c) “Competent authority” means:
 - (i) In respect of Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
 - (ii) In respect of Belize, the Minister of Finance or his authorised representative;
 - d) “Person” includes an individual, a company and any other body of persons,
 - e) “Company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
 - f) “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,
 - g) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
 - h) “Recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties,

- i) “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,
- j) “Tax” means any tax to which the Agreement applies,
- k) “Requesting Party” means the Party requesting information,
- l) “Requested Party” means the Party requested to provide information,
- m) “Information-gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information,
- n) “Information” means any fact, statement, document or record in any form whatever,
- o) “Tax matters” means all tax matters including criminal tax matters,
- 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,
- q) “Criminal laws” means all criminal laws designated as such under the respective law of the Parties 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 the time the request was made 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 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 it 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 in its own territory, 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, that Party shall use at its own discretion all applicable information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, need such information for its own tax purposes.

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

4. Each Party shall ensure that its competent authorities, in accordance with the terms of this 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; and
- b) Information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries,

provided that 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 funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail 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 sought and the form in which the requesting Party would prefer to receive it,
 - d) The tax purpose for which the information is sought,
 - e) The reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the tax law 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 held in the requested Party or is in the possession of or obtainable by 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 of the requested information,
 - 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 those that would give rise to disproportionate difficulties.
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 reasonable delay.

Article 6
TAX EXAMINATIONS ABROAD

1. By reasonable notice given in advance, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its 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.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party about the time and place of the examination, the authority or official designated 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.

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 the public policy of the requested Party.
2. This Agreement shall not impose upon a requested Party any obligation:
 - a) To provide items subject to legal privilege, or 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; or
 - b) 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.

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 requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.
5. 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 citizen or a national of the requested Party as compared with a citizen or a national of the requesting Party in the same circumstances.

Article 8

CONFIDENTIALITY AND DATA PROTECTION

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 expressed written consent of the competent authority of the requested Party.
4. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.
5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.
6. In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199 of the Economic Partnership Agreement of 15 October, 2008 between the Cariforum States and the European Community and its Member States shall be applied accordingly.

Article 9
COSTS

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

Article 10
IMPLEMENTATION LEGISLATION

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

Article 11
MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the 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 Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on procedures for dispute resolution should this become necessary.

Article 12
ENTRY INTO FORCE

1. This Agreement shall enter into force thirty days from the date on which the Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. Upon the date of entry into force, this Agreement 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 13
DURATION AND TERMINATION

1. The present Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the present Agreement upon a prior notification by giving written notice of termination to the other Party.
3. The present Agreement shall terminate six months after the receipt of such notification.
4. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of the present Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE at London on the 22nd day of October of 2010, in duplicate, in the English and Portuguese languages, both texts being equally authentic.

FOR BELIZE:

FOR THE PORTUGUESE REPUBLIC:



KAMELA PALMA

SÉRGIO TAVARES VASQUES

High Commissioner for Belize
in the United Kingdom

Secretary of State of the Fiscal Affairs