

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS ON THE ACCESS TO MUTUAL AGREEMENT PROCEDURES IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

The Government of the Kingdom of Sweden and the Government of the British Virgin Islands, desiring to conclude an agreement on the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises, have agreed as follows:

Article 1

Taxes covered

The taxes to which this Agreement shall apply are:

- (a) in the British Virgin Islands: income tax (hereinafter referred to as “the British Virgin Islands tax”);
- (b) in Sweden:
 - (i) the national income tax (den statliga inkomstskatten); and
 - (ii) the municipal income tax (den kommunala inkomstskatten) (hereinafter referred to as “Swedish tax”).

Article 2

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “Party” means the British Virgin Islands or Sweden as the context requires; the term “Parties” means the British Virgin Islands and Sweden;

- (b) the term “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- (c) the term “the British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (d) the term “resident of a Party” means:
 - (i) in Sweden, any person, who under the law of Sweden is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature; this term, however, does not include a person who is liable to tax in Sweden in respect only of income from sources in Sweden;
 - (ii) in the British Virgin Islands, an individual ordinarily resident in the British Virgin Islands, and a company, partnership or other entity created under the laws of the British Virgin Islands; provided that an entity created under the laws of the British Virgin Islands shall not be deemed to be resident in the British Virgin Islands unless its effective management is carried on in the British Virgin Islands;
- (e) the term “enterprise” applies to the carrying on of any business;
- (f) the term “enterprise of a Party” means an enterprise carried on by a resident of a Party;
- (g) the term “competent authority” means:
 - (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing
 - (ii) in the case of Sweden, the Minister of Finance, or an authorised representative or the authority which is designated as a competent authority for the purposes of 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 law of that Party for the purposes of the taxes to which the Agreement applies, 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 3

Principles applying to the adjustment of profits of associated enterprises

Where:

- (a) an enterprise of a Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 4

Mutual agreement procedures

1. Where an enterprise considers that, in any case to which this Agreement applies, the principles set out in Article 3 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Party concerned, present its case to the competent authority of the Party of which it is a resident. The case must be presented within three years from the first notification of the action which is contrary or is likely to be contrary to the principles set out in Article 3. The competent authority shall then without delay notify the competent authority of the other Party.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 5

Entry into force

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Agreement enters into force;
 - (ii) in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the date on which the Agreement enters into force.
3. Notwithstanding paragraph 2, this Agreement shall only have effect when the Agreement signed on _____ between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to taxes shall have effect.

Article 6

Termination

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Agreement shall cease to have effect
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the end of the six month period;
 - (ii) in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the end of the six month period.

2. Notwithstanding paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on _____ between the Kingdom of Sweden and the British Virgin Islands for the exchange of information relating to taxes.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

Done at _____, this _____, in
duplicate in the English language.

For the Government of
the Kingdom of Sweden

For the Government
of the British Virgin Islands