

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**Agreement between the Government of Australia and the Government of the Principality of
Liechtenstein on the exchange of information on taxes**

Done at Vaduz on 21 June 2011

Not yet in force

[2011] ATNIF 10

PREAMBLE

The Government of Australia and the Government of the Principality of Liechtenstein, hereinafter referred to as "the Contracting Parties",

WHEREAS the Contracting Parties recognise that the well-developed economic ties between the Contracting Parties call for further cooperation;

WHEREAS the Contracting Parties wish to develop their relationship further by cooperating to their mutual benefits in the field of taxation;

WHEREAS the Contracting Parties wish to strengthen the ability of both Contracting Parties to enforce their respective tax laws; and

WHEREAS the Contracting Parties wish to establish the terms and conditions governing the exchange of information on tax matters –

Have agreed as follows:

ARTICLE 1

OBJECT AND SCOPE OF THIS AGREEMENT

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, collection and the recovery and enforcement of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of 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 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 obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

TAXES COVERED

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

(a) in Australia, taxes of every kind and description imposed under federal laws administered by the Commissioner of Taxation; and

(b) in the Principality of Liechtenstein:

the personal income tax (Erwerbssteuer);

the corporate income tax (Ertragssteuer);

the corporation taxes (Gesellschaftssteuern);

the real estate capital gains tax (Grundstuecksgewinnsteuer);

the wealth tax (Vermögenssteuer);

the coupon tax (Couponsteuer); and

the estate, inheritance and gift taxes (Nachlass- Erbanfalls- und Schenkungssteuern).

2 This Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. 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 this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Contracting Party.

ARTICLE 4

DEFINITIONS

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

- (a) the term "Applicant Party" means the Contracting Party requesting information;
- (b) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

- (c) the term "Principality of Liechtenstein" means, when used in a geographical sense, the area of the sovereign territory of the Principality of Liechtenstein;
- (d) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased,

sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- (e) the term "company" means any body corporate and any entity or special asset endowments that are treated as a body corporate for tax purposes;
- (f) the term "competent authority" means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Principality of Liechtenstein, the Government of the Principality of Liechtenstein or its authorised representative;
- (g) the term "Contracting Party" means Australian Government or Liechtenstein Government as the context requires;
- (h) 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 statutes;
- (i) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;
- (j) the term "information" means any fact, statement or record in any form whatever;
- (k) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (l) the term "national" means:
 - i) in the case of Australia,
 - (1) any individual who is a citizen of Australia; and
 - (2) any company, partnership or association deriving its status as such from the laws of Australia.
 - ii) in relation to Liechtenstein any individual possessing "Landesbuengerrechte" according to the "Buengerrechtsgesetz" (LGB1. 1960, No. 23) and any person other than an individual deriving its status as such from the laws in force in Liechtenstein;

- (m) the term "person" includes an individual, a company, a dormant inheritance and any other body of persons;
- (n) 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;
- (o) 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;
- (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 requested to provide information; and
- (r) the term "tax" means any tax to which this Agreement applies.

2 As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, shall have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1 The competent authority of the Requested Party shall provide upon request from the Applicant 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 whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

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

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

4 Each Contracting Party shall ensure that its competent authority, in accordance with the terms of this Agreement have 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; 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. Further, 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.

5 Any request for information shall be formulated with the greatest detail possible and shall in all cases specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the taxable period for which the information is sought;
- (c) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
- (d) the matter under the Applicant Party's tax law with respect to which the information is sought;

- (e) the grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the domestic tax laws of the Applicant Party with regard to the person specified in subparagraph (a);
- (f) the grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (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 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 or in the normal course of administrative practice of the Applicant Party and that it is in conformity with this Agreement; and
- (i) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6 The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party.

ARTICLE 6

TAX EXAMINATIONS ABROAD

1 By reasonable notice given in advance, the Applicant Party may request that the Requested Party allows representatives of the competent authority of the Applicant 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 Requested Party shall notify the competent authority of the Applicant 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 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 Applicant 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 Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.

2 The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3 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 The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5 A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

6 The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1 All information provided and received, including in conjunction with a request for assistance, by the competent authorities of the Contracting Parties shall be kept confidential.

2 This information may be disclosed only to persons or authorities (including courts and administrative bodies) of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. For these purposes, information may be used in public court proceedings or in judicial decisions.

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

4 Information received under this Agreement must not be disclosed to any other State or sovereign territory not party to this Agreement without the expressed written consent of the competent authority of the Requested Party.

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 Requested Party.

6 Information received by the Requested Party in conjunction with a request for assistance under this agreement shall likewise be treated as confidential in the Requested Party.

ARTICLE 9

COSTS

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting Party, the competent authorities shall consult as necessary 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 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 Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
- 2 In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this Agreement.
- 3 The competent authorities of the Contracting Parties may communicate with each other directly for purposes of this Article.
- 4 The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 11

ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force one month after the date of the last notification and shall have

effect for all requests made but only with respect of taxable periods beginning on or after 1 July 2011.

ARTICLE 12

TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may after the expiration of 3 years from the date of its entry into force, give to the other Contracting Party through the diplomatic channel written notice of termination.

2 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 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 provided and received under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at _____, this _____ day of _____, 2011, in duplicate, in the English language.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF THE
PRINCIPALITY OF LIECHTENSTEIN: