

The Department of State has the honor to refer the Embassy of the Republic of Panama to the Agreement between the Government of the United States of America and the Government of the Republic of Panama for Tax Cooperation and the Exchange of Information Relating to Taxes (“the Agreement”), signed today, and to confirm on behalf of the Government of the United States the following understandings reached between our two Governments (“the Parties”):

1. With respect to subparagraph 1(a) of Article 3 (Taxes Covered) of the Agreement, it is mutually understood by the Parties that the term “all federal taxes” includes the following taxes imposed by the United States:
  - (a) Federal income taxes;
  - (b) Federal taxes related to employment;
  - (c) Federal estate and gift taxes; and
  - (d) Federal excise taxes.
  
2. With respect to subparagraph 1(b) of Article 3 (Taxes Covered) of the Agreement, it is mutually understood by the Parties that the term “all national taxes” includes the following taxes imposed by the Republic of Panama:
  - (a) Income Tax
  - (b) Real Estate Tax
  - (c) Vessels Tax
  - (d) Stamp Tax
  - (e) Notice of Operations Tax
  - (f) Tax on Banks, Financial and Currency Exchange Companies.
  - (g) Insurance Tax
  - (h) Tax on the Consumption of Fuel and Oil Derivates
  - (i) Tax on the Transfer of Movable Goods and the Provision of Services
  - (j) Tax on the Consumption of certain Goods and Services
  - (k) Tax on the Transfer of Immovable Goods
  
3. With respect to Article 9 (Costs) of the Agreement, it is mutually understood by the Parties that costs that would be incurred in the ordinary course of administering the

domestic tax laws of the requested State shall be borne by the requested party when those costs are incurred for purposes of responding to a request for information. It is also mutually understood by the Parties that all other costs are considered extraordinary costs, and shall be borne by the requesting party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) fees charged by third parties for research and copying documents;
- (b) fees for non-government counsel or experts appointed or retained, with the approval of the competent authority of the requesting Party, for litigation in the courts of the requested party related to a specific request for information;
- (c) fees and expenses of a person who appears for an interview, deposition or testimony relating to a specific information request. The fees and expenses will be the ordinary amounts allowed under the laws of the party in which the interview, deposition or testimony is held or taken.

The competent authorities shall consult with each other in advance if extraordinary costs are likely to exceed \$1,000, or in the case of subparagraph (c) of this paragraph, \$100, in order to determine whether the requesting Party will continue to pursue the request and bear the cost.

- 4. The Government of the United States of America and the Government of Panama intend that the Agreement enter into force as soon as is practicable following the enactment of any legislation by Panama that is necessary under its domestic laws in order for Panama to comply fully with the terms of the Agreement. The Government of Panama expects that this legislation will be enacted before the end of 2011. As soon as practicable after such legislation has been enacted, the Government of the United States and the Government of Panama intend to take such actions, including exchange of notifications, as are necessary to cause the Agreement to enter into force in accordance with its terms.
- 5. The United States understands that, with respect to the necessary legislation referred to in paragraph 4, Panama intends to enact legislation requiring the identification of the owners of bearer shares. The United States further understands that such legislation:
  - (a) will require resident agents acting for Panamanian entities to obtain and maintain in their records information sufficient to identify the owners of those entities, even in cases in which shares of those entities are issued in bearer form, including, where the owner is a legal person, information sufficient to identify substantial owners of that legal person. For this purpose, a resident agent will not be required to obtain and maintain information sufficient to identify substantial owners of legal persons in cases where the resident agent acts for a professional client that is part of

an organization that is required to maintain information on such entities and that has agreed to make available such information to the resident agent when requested;

- (b) will require resident agents to produce ownership and client identity information in their possession in response to a proper request under the Agreement, whether with respect to newly-formed entities or entities in existence at the time the legislation is enacted; and
  - (c) will require resident agents to obtain such ownership information with respect to entities existing at the time the legislation is enacted within a five year period from the date of the enactment of the law.
6. It is mutually understood that under laws currently in effect, each party is authorized to obtain and exchange information, including information held by financial institutions and other fiduciaries, pursuant to a request under a tax information exchange agreement, regardless of whether the requested party has a domestic tax interest in such information.
  7. Under section 274(h) of the U.S. Internal Revenue Code, an individual may deduct from income expenses incurred with respect to attendance at a conference or convention held in Panama in the same manner and to the same extent the individual would be permitted to deduct such expenses with respect to attendance at a conference or convention held in the United States, provided that there is in effect between Panama and the United States a tax information exchange agreement meeting the requirements of section 274(h)(6). It is mutually understood that the Agreement is intended to meet those requirements.
  8. It is mutually understood that the entry into force of this Agreement does not prevent the Parties from discussing the possibility of an agreement for the avoidance of double taxation in the future.

The Department has the further honor to propose, on behalf of the Government of the United States of America, that the present note and the Embassy's affirmative reply thereto confirming that the Government of the Republic of Panama shares these understandings shall constitute an agreement between the two Governments on these points which shall enter into force on the same date as the Agreement.

Department of State,

Washington, November 30, 2010