

MUTUAL AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF THE UNITED KINGDOM AND THE FEDERAL REPUBLIC OF GERMANY IN ORDER TO SETTLE THE MODE OF APPLICATION OF THE ARBITRATION PROCESS PROVIDED BY PARAGRAPH 5 OF ARTICLE 26 OF THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY .FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT LONDON ON 30 MARCH 2010.

In respect of any case submitted to arbitration pursuant to paragraph 5 of Article 26 of the Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at London on 30 March 2010 ("the Convention"), the following rules and procedures shall apply. The competent authorities of the United Kingdom and Germany may modify or supplement this agreement by an exchange of letters between them.

1. Request for submission of the case to arbitration.

A request that unresolved issues arising from a mutual agreement case be submitted to arbitration pursuant to paragraph 5 of Article 26 of the Convention (the "request for arbitration") shall be made in writing and sent to one of the competent authorities. The request shall contain sufficient information to identify the case. The request shall also be accompanied by a written statement by each of the persons who either made the request or is directly affected by the case that no decision on the same issues has already been rendered by a court or administrative tribunal of either Contracting State. Within 10 days of the receipt of the request, the competent authority who received it shall send a copy of the request and the accompanying statements to the other competent authority.

2. Time for submission of the case to arbitration.

A request for arbitration may only be made after two years from the date on which a case presented to the competent authority of one Contracting State under paragraph 1 of Article 26 has also been presented to the competent authority of the other State. For this purpose, a case shall be considered to have been presented to a competent authority only when such competent authority has received the information necessary to undertake substantive consideration for a mutual agreement.

That information may include:

- a) identification (such as name, address, tax identification number) of the person that presents the request and of any person directly affected by the case (e.g. related persons or associated enterprises);
- b) details of the relevant facts and circumstances of the case (including details of the relations between the person that presents the request and the persons directly affected by the case);
- c) identification of the tax periods concerned;

- d) copies of relevant tax assessment notices, tax audit report or equivalent leading to the alleged taxation not in accordance with the Convention;
- e) details of any appeals and litigation procedures initiated in Germany or in the United Kingdom by the person that presents the request or by any person directly affected by the case and of any court decisions concerning the case;
- f) details of any unilateral Advance Pricing Agreement (APA) initiated in Germany or in the United Kingdom by the person that presents the request or by any person directly affected by the case;
- g) an explanation of the reason why the person that presents the request considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the Convention;
- h) the nature of the actions initiated in Germany and/or in the United Kingdom;
- i) any specific additional information requested by any competent authority within three months of the receipt of the request by that competent authority.

3. Terms of Reference.

Within three months after the request for arbitration has been received by both competent authorities, the competent authorities shall agree on the questions to be resolved by the arbitration panel and communicate them in writing to the person who made the request for arbitration. This will constitute the "Terms of Reference" for the case. Notwithstanding the following paragraphs, the competent authorities may also, in the Terms of Reference, provide procedural rules that are additional to, or different from, those included in this agreement and deal with such other matters as are deemed appropriate.

4. Failure to communicate the Terms of Reference.

If the Terms of Reference have not been communicated to the person who made the request for arbitration within the period referred to in paragraph 3 above, that person and each competent authority may, within one month after the end of that period, communicate in writing to each other a list of issues to be resolved by the arbitration. All the lists so communicated during that period shall constitute the tentative Terms of Reference. Within one month after all the arbitrators have been appointed as provided in paragraph 5 below, the arbitrators shall communicate to the competent authorities and the person who made the request for arbitration a revised version of the tentative Terms of Reference based on the lists so communicated. Within one month after the revised version has been received by both of them, the competent authorities will have the possibility to agree on different Terms of Reference and to communicate them in writing to the arbitrators and the person who made the request for arbitration. If they do so within that period, these different Terms of Reference shall constitute the Terms of Reference for the case. If no different Terms of Reference have been agreed to between the competent authorities and

communicated in writing within that period, the revised version of the tentative Terms of Reference prepared by the arbitrators shall constitute the Terms of Reference for the case.

5. Selection of arbitrators.

Within three months after the Terms of Reference have been received by the person who made the request for arbitration or, where paragraph 4 applies, within four months after the request for arbitration has been received by both competent authorities, the competent authorities shall each appoint one arbitrator. Within two months of the later appointment, the arbitrators so appointed will appoint a third arbitrator who will function as Chair. If any appointment is not made within the required time period, the arbitrator(s) not yet appointed shall be appointed by the highest-ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Contracting State within 15 days of receiving a request to that effect from the person who made the request for arbitration. The same procedure shall apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitral process has begun. Unless the Terms of Reference provide otherwise, the mode of remuneration will be identical to the method used in the Code of Conduct on the EC Arbitration Convention

6. Streamlined arbitration process.

If the competent authorities so indicate in the Terms of Reference (provided that these have not been agreed to after the selection of arbitrators pursuant to paragraph 4 above), the following rules shall apply to a particular case notwithstanding paragraphs 5, 11, 15, 16, 17 and 19:

- a) Within one month after the Terms of Reference have been received by the person who made the request for arbitration, the two competent authorities shall, by common consent, appoint one arbitrator. If, at the end of that period, the arbitrator has not yet been appointed, the arbitrator will be appointed by the highest ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Contracting State within 15 days of receiving a request to that effect from the person who made the request in paragraph 1. Unless the Terms of Reference provide otherwise the mode of remuneration will be identical to the method used in the Code of Conduct on the EC Arbitration Convention.
- b) Within two months from the appointment of the arbitrator, each competent authority will present in writing to the arbitrator its own reply to the questions contained in the Terms of Reference.
- c) Within one month from having received the last of the replies from the competent authorities, the arbitrator will decide each question included in the Terms of Reference in accordance with one of the two replies received from the competent authorities as regards that question and will notify the competent authorities and any person directly affected by the case of the choice, together with short reasons

explaining that choice. Such decision will be implemented as provided in paragraph 19.

7. Eligibility and appointment of arbitrators.

Any person, including a government official of a Contracting State, may be appointed as an arbitrator, unless that person has been involved in prior stages of the case that results in the arbitration process. An arbitrator will be considered to have been appointed when a letter confirming that appointment has been signed both by the person or persons who have the power to appoint that arbitrator and by the arbitrator himself.

8. Communication of information and confidentiality.

For the sole purposes of the application of the provisions of Articles 26 and 27, and of the domestic laws of the Contracting States, concerning the communication and the confidentiality of the information related to the case that results in the arbitration process, each arbitrator shall be designated as authorised representative of the competent authority that has appointed that arbitrator or, if that arbitrator has not been appointed exclusively by one competent authority, of the competent authority to which the case giving rise to the arbitration was initially presented. Therefore the arbitrators are subjected to the same strict confidentiality requirements as regards the information related to the case as apply to the competent authorities themselves.

9. Failure to provide information in a timely manner.

Notwithstanding paragraphs 5 and 6, where both competent authorities agree that the failure to resolve an issue within the two-year period provided in paragraph 5 of Article 26 is mainly attributable to the failure of a person directly affected by the case to provide relevant information in a timely manner, the competent authorities may postpone the appointment of the arbitrators for a period of time corresponding to the delay in providing that information.

10. Procedural and evidentiary rules.

Subject to this agreement and the Terms of Reference, the arbitrators shall adopt those procedural and evidentiary rules that they deem necessary to answer the questions set out in the Terms of Reference. They will have access to all information necessary to decide the issues submitted to arbitration, including confidential information. Unless the competent authorities agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.

11. Participation of the person who requested the arbitration.

The person who made the request for arbitration may, either directly or through his representatives, present his position to the arbitrators in writing to the same extent that he can do so during the mutual agreement procedure. In addition, with the permission of the arbitrators, the person may present his position orally during the arbitration proceedings.

12. Logistical arrangements.

Unless agreed otherwise by the competent authorities, the competent authority to which the case giving rise to the arbitration was initially presented will be responsible for the logistical arrangements for the meetings of the arbitral panel and will provide the administrative personnel necessary for the conduct of the arbitration process. The administrative personnel so provided will report only to the Chair of the arbitration panel concerning any matter related to that process.

13. Costs.

Unless agreed otherwise by the competent authorities:

- a) each competent authority and the person who requested the arbitration will bear the costs related to his own participation in the arbitration proceedings (including travel costs and costs related to the preparation and presentation of his views);
- b) each competent authority will bear the remuneration of the arbitrator appointed exclusively by that competent authority, or appointed by the highest ranking member of the Secretariat of the OECD Centre for Tax Policy and Administration who is not a citizen of either Contracting State because of the failure of that competent authority to appoint that arbitrator, together with that arbitrator's travel, telecommunication and secretariat costs;
- c) the remuneration of the Chair and of the arbitrator appointed in the streamlined arbitration process and their travel, telecommunication and secretariat costs will be borne equally by the two Contracting States;
- d) costs related to the meetings of the arbitral panel and to the administrative personnel necessary for the conduct of the arbitration process will be borne by the competent authority to which the case giving rise to the arbitration was initially presented; and
- e) all other costs (including costs of translation and of recording the proceedings) related to expenses that both competent authorities have agreed to incur, will be borne equally by the two Contracting States.

14. Applicable Legal Principles.

The arbitrators shall decide the issues submitted to arbitration in accordance with the applicable provisions of the treaty and, subject to these provisions, of those of the domestic laws of the Contracting States. Issues of treaty interpretation will be decided by the arbitrators in the light of the principles of interpretation incorporated in Articles 31 to 34 of the Vienna Convention on the Law of Treaties, having regard to the Commentaries of the OECD Model Tax Convention as periodically amended, as explained in paragraphs 28 to 36.1 of the Introduction to the OECD Model Tax Convention. Issues related to the application of the arm's length principle should similarly be decided having regard to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The arbitrators will also consider any other sources which the competent authorities may expressly identify in the Terms of Reference.

15. Arbitration decision.

Where more than one arbitrator has been appointed, the arbitration decision will be determined by a simple majority of the arbitrators. Unless otherwise provided in the Terms of Reference, the decision of the arbitral panel will be presented in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. With the permission of the person who made the request for arbitration and both competent authorities, the decision of the arbitral panel will be made public in redacted form without mentioning the names of the parties involved or any details that might disclose their identity and with the understanding that the decision has no formal precedential value.

16. Time allowed for communicating the arbitration decision.

The arbitration decision must be communicated to the competent authorities and any person directly affected by the case within six months from the date on which the Chair notifies in writing the competent authorities and the person who made the request for arbitration that he has received all the information necessary to begin consideration of the case. Notwithstanding the first part of this paragraph, if at any time within two months from the date on which the last arbitrator was appointed, the Chair, with the consent of one of the competent authorities, notifies in writing the other competent authority and the person who made the request for arbitration that he has not received all the information necessary to begin consideration of the case, then

- a) if the Chair receives the necessary information within two months after the date on which that notice was sent, the arbitration decision must be communicated to the competent authorities and any person directly affected by the case within six months from the date on which the information was received by the Chair, and
- b) if the Chair has not received the necessary information within two months after the date on which that notice was sent, the arbitration decision must, unless the competent authorities agree otherwise, be reached without taking into account that information even if the Chair receives it later and the decision must be communicated to the competent authorities and the any person directly affected by the case within eight months from the date on which the notice was sent.

17. Failure to communicate the decision within the required period.

In the event that the decision has not been communicated to the competent authorities within the period provided for in paragraphs 6, c) or 16, the competent authorities may agree to extend that period for a period not exceeding six months or, if they fail to do so within one month from the end of the period provided for in paragraphs 6, c) or 16, they shall appoint a new arbitrator or arbitrators in accordance with paragraph 5 or 6, a), as the case may be.

18. Final decision.

The arbitration decision shall be final, unless that decision is found to be unenforceable by the courts of one of the Contracting States because of a violation of paragraph 5 of Article 26 or of any procedural rule included in the Terms of Reference or in this agreement that may reasonably have affected the decision. If a decision is found to be unenforceable for one of these reasons, the arbitration process shall be considered not to have taken place (except for the purposes of paragraphs 8 "Communication of information and confidentiality" and 13 "Costs").

19. Implementing the arbitration decision.


The competent authorities will implement the arbitration decision within six months from the communication of the decision to them by reaching a mutual agreement on the case that led to the arbitration.

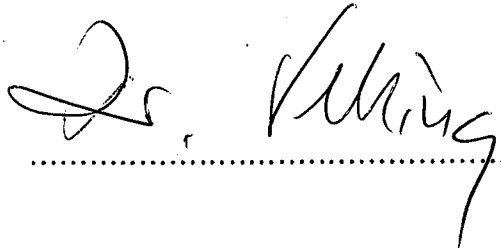
20. Where no arbitration decision will be provided.

Where, at any time after a request for arbitration has been made and before the arbitrators have delivered a decision to the competent authorities and the person who made the request for arbitration, the competent authorities notify in writing the arbitrators and that person that they have solved all the unresolved issues described in the Terms of Reference, the case shall be considered as solved under the mutual agreement procedure and no arbitration decision shall be provided. This agreement applies to any request for arbitration made pursuant to paragraph 5 of Article 26 of the Convention after that provision has become effective.

THE COMPETENT AUTHORITY OF  
THE UNITED KINGDOM :

THE COMPETENT AUTHORITY OF  
GERMANY:

  
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20/9/2011