

THE INTERNATIONAL TAX COOPERATION BILL, 2010

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THE INTERNATIONAL TAX COOPERATION BILL, 2010

ABILL FOR AN ACT TO IMPLEMENT INTERNATIONAL AGREEMENTS BETWEEN THE BAHAMAS AND FOREIGN STATES PROVIDING FOR COOPERATION IN TAX MATTERS INCLUDING THE EXCHANGE OF INFORMATION, AND FOR RELATED PURPOSES

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the The International Tax Cooperation Act, 2010.
- (2) This Act shall come into force on the 30th day of June 2010.

2. Interpretation.

- (1) In this Act –
 - “**Agreement**” means a treaty, convention or any other international agreement that makes provision for the exchange of information with respect to tax matters between a foreign state and The Bahamas, as identified in the Schedule hereto;
 - “**competent authority**” has the meaning specified in its governing Agreement and in the case of The Bahamas means the Minister of Finance or his duly authorised representative;
 - “**information**” means any fact, statement or record, in any form whatsoever;
 - “**judge**” means a judge of the Supreme Court of The Bahamas;
 - “**Minister**” means the Minister of Finance or his duly authorised representative, as provided in subsection (2) of this section;
 - “**national**” has the meaning specified in its governing Agreement;
 - “**premises**” includes any place whatsoever and any means of transport;
 - “**regulation**” means a regulation made under section 13;
 - “**request**” unless the context otherwise requires, means an application made pursuant to an Agreement;

“requesting state” means the party to an Agreement that is making a request to be supplied with information;

“requested state” means the party to an Agreement that is requesting information.

- (2) In this Act, and subject to subsection (3) of this section, a reference to the Minister, in relation to any function to be performed by the Minister under this Act, includes a reference to his duly authorised representative for the purpose of an Agreement.
- (3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right except those powers in section 13 relating to the making of subsidiary legislation.

3. Purpose of this Act.

- (1) This Act has effect for the purpose of enforcing the giving of assistance by persons in The Bahamas in the performance of the obligations assumed by The Bahamas under the Agreements specified in the Schedule hereto.
- (2) Subject to the provisions of subsection (3) of this section, the Minister in performing his functions under this Act is not restricted by any law or any rule of law relating to confidentiality except as expressly provided for in a governing Agreement.
- (3) Nothing in this Act shall be construed so as to impose on the Minister any obligation to—
 - (a) carry out administrative measures at variance with the laws and administrative practices of The Bahamas;
 - (b) assist where a request is not made in conformity with its governing Agreement;
 - (c) supply information—
 - (i) which is not obtainable under the laws or in the normal course of the administration of The Bahamas;
 - (ii) which would disclose any trade, business, industrial, commercial or professional secret or trade process;
 - (iii) the disclosure of which would, in the judgement of the Government of The Bahamas, be contrary to the national security or public policy of The Bahamas;
 - (iv) if the information requested is for the purpose of administering or enforcing a provision of the tax law of the requesting state, or any requirement connected therewith, which discriminates against a national of The Bahamas as compared with a national of the requesting state in the same circumstances;
 - (v) which relates to a matter under the laws of a requesting state that is barred by the applicable statute of limitations; or

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- (vi) which is subject to legal privilege in accordance with the terms of an Agreement.

4. Procedure in respect of a request.

- (1) A request must be in writing.
- (2) A request must be signed by a senior official designated by the requesting state.
- (3) A request shall contain—
 - (a) such of the following particulars as may be specified in its governing Agreement—
 - (i) the identity of the person under examination or investigation;
 - (ii) a statement of the information sought, including its nature, and the form in which the requesting state wishes to receive the information from the requested state;
 - (iii) the period of time in respect of which the information is requested;
 - (iv) where a request seeks information relating to a timeframe outside the taxable period specified in the request, the request must clearly establish the connection between that taxable period and the timeframe for the information sought;
 - (v) the tax purpose for which the information is sought;
 - (vi) the grounds for believing that the information requested is held in the requested state or is in the possession or control of a person that is subject to the jurisdiction of the requested state;
 - (vii) to the extent known, the name and address of any person believed to be in possession of the requested information;
 - (viii) a statement that the request is in conformity with the law and administrative practices of the requesting state, that if the requested information was within the jurisdiction of the requesting state then the competent authority of requesting state would be able to obtain the information under the laws of the requesting state or in the normal course of administrative practice and that the request is in conformity with its governing Agreement;
 - (ix) a statement that the requesting state has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties;
 - (x) an indication as to whether the information is required for determining, assessing and collecting taxes or for the investigation or prosecution of tax offences involving the contravention of a tax administration or other relevant law;

- (xi) where the request is in respect of the determining, assessing and collecting of tax, the law imposing the tax;
 - (xii) where the request involves a contravention of a tax administration or other relevant law, the law contravened or believed to have been contravened;
 - (xiii) evidence that the information being sought is foreseeably relevant to the administration or enforcement of the tax laws in respect of determining, assessing and collecting taxes or for the prosecution of tax offences or involves the contravention of tax administration law (as the case may be); and
- (b) in addition to the relevant particulars referred to in paragraph (a) of this section, such other particulars specifically provided for in its governing Agreement.

5. Power to require production of information.

- (1) Subject to this section, where the Minister receives a request where the requirements of section 4 are fulfilled, the Minister shall, by notice in writing under this section served upon the person referred to in sub-paragraph (vii) of paragraph (a) of section 4, direct the person to deliver to the Minister the information referred to in that sub-paragraph.
- (2) Where the Minister receives a request which seeks information, he shall only issue a notice under this section to a person where the Minister is satisfied that the information is foreseeably relevant to the proper administration and enforcement of the domestic tax laws of the requesting state concerning tax matters covered by the governing Agreement.
- (3) A notice issued under subsection (1) of this section must—
 - (a) contain details of the request to which the notice relates; and
 - (b) specify the timeframe within which the information sought by the request is to be delivered to the Minister, and the timeframe shall not be more than twenty-eight days, commencing with the day on which the notice was served.
- (4) The Minister may extend the time specified in the notice where he considers that the circumstances warrant such an extension.
- (5) Subject to subsection (4) of this section, a person who is directed by such a notice to deliver information to the Minister shall deliver it to the Minister in accordance with the notice if the information is in his possession or custody, or under his control.
- (6) A direction given in a notice under this section to a person is an absolute defence to any claim brought against him in respect of any act of his that was done, or any omission of his that was made, in good faith in obedience to the direction.

6. Power to enter premises to obtain information.

- (1) The Minister or an officer duly authorised by him may apply to a judge in accordance with the provisions of this section for a warrant to enter upon premises for the purpose of enforcing a notice issued under section 5.
- (2) Any officer so authorised under subsection (1) of this section must produce to the judge the written authority signed by the Minister.
- (3) Where, on information given on oath by such an officer, a judge is satisfied that there are reasonable grounds for to suspect that an offence against this Act has been, or is being, or is about to be, committed on any premises, being an offence by reason of which the delivery to the Minister of information sought by a request is endangered, then the judge may issue a warrant in writing authorising an officer of the Ministry, accompanied by a police officer, to enter the premises, if necessary by force, within fourteen days commencing on the day of the issue of the warrant, and search them, at any time during normal business hours.
- (4) Where a warrant is issued under this section, the judge may impose such restrictions upon the execution of the warrant as he may deem proper in the circumstances.
- (5) An officer who enters the premises by virtue of a warrant under this section may be accompanied by such other persons and equipment as he considers necessary to enable him to enforce the warrant, and, on leaving such premises entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.
- (6) Where the officer enters the premises by virtue of a warrant under this section, the officer may seize and remove any article, document or information relevant to a request under this Act found there, which he has reasonable cause to believe may be relevant to that request, and shall immediately deliver to the Minister such article, document or information so seized and removed.
- (7) Where entry to premises has been made by virtue of a warrant under this section and the officer making the entry has seized any article, document or information under the authority of the warrant, he shall prepare a list of them and, if so requested by a person showing himself either—
 - (a) to be the occupier of the premises; or
 - (b) to have had possession or custody of the article, document or information immediately before the seizure,provide that person with a copy of that list.
- (8) Where articles, documents or information are seized under the authority of a warrant and it is shown that access to such articles, documents and information is required for the continued conduct of the business or affairs

of any person, the Minister shall afford to that person reasonable access to those things.

7. Procedure for dealing with information received by the Minister pursuant to sections 5 and 6.

Where the Minister obtains documents or information by virtue of section 5 or 6, he shall —

- (a) not disclose or reveal to any person, the contents or import of the document or information, for twenty days or such extended time period pursuant to paragraph (c), commencing on the day on which he obtained the document or information;
- (b) after the expiry of those twenty days, if the document or information in his opinion contains information sought by a request, provide authenticated copies of such information to the competent authority of the requesting state; and
- (c) extend the time period under paragraph (a) above in the event a taxpayer or interested person has objected to the Minister providing the assistance requested and has sought judicial review of an act of the Minister or other lawful recourse against an act of the Minister pursuant to the provisions of section 10.

8. Depositions and documents.

Where a request, in accordance with its governing agreement, so stipulates, the Minister shall obtain the information sought by the request in the form of—

- (a) depositions of witnesses; or
- (b) authenticated copies of original documents,

being depositions so made, and copies so authenticated, as the laws and administrative practices of The Bahamas permit.

9. Tax interviews and examinations.

- (1) Subject to subsection (2) , the Minister may allow representatives of a competent authority of a requesting state to interview individuals and examine records in The Bahamas upon being satisfied that—
 - (a) such representatives have complied with the laws of The Bahamas regarding entry into The Bahamas; and
 - (b) the written consent of the persons to be interviewed or whose records are to be examined has been provided to the competent authority of The Bahamas.
- (2) The conduct of any interview or examination under this section shall be subject to any additional conditions that the Minister, in his discretion, may set from time to time.

10. Judicial review.

Nothing in this Act excludes or restricts the right of any person aggrieved by the performance by the Minister or any other person of any function under this Act to challenge the performance of that function, in so far as it affects him, either by seeking review of it by the Supreme Court or by taking any other action which is lawfully available.

11. Service of documents.

A document to be served under this Act is properly served on the person to whom it is addressed if it is delivered to the person personally or sent by registered post in his name to his last known business or private address.

12. Offences.

- (1) A person who—
 - (a) contravenes subsection (5) of section 5; or
 - (b) wilfully obstructs an officer executing a warrant under section 6 or a person lawfully accompanying him pursuant to subsection (5) of that section,commits an offence.
- (2) Any person who in, or in connection with, delivering information pursuant to subsection (5) of section 5, wilfully tampers with or alters any information or any part of such information so that the information or any part of such information is false when received by the Minister, commits an offence.
- (3) Any person who wilfully alters, destroys, damages or conceals any information requested by the Minister pursuant to section 5 commits an offence.
- (4) Any person who commits an offence under this section shall be liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding twelve months or to both.

13. Power to make subsidiary legislation.

- (1) The Minister may make regulations—
 - (a) prescribing anything that is required or permitted by this Act to be prescribed by regulations, or that is, in the opinion of the Minister, necessary or convenient to be prescribed for carrying out this Act or giving effect to it; and
 - (b) creating offences and prescribing penalties for such offences but not exceeding the penalties fixed by section 12.
- (2) The Minister shall by Order amend the Schedule to give effect to an Agreement.

- (3) The provisions of sections 31 and 32 of the Interpretation and General Clauses Act shall not apply in relation to any regulations made by the Minister under this Act but instead all such regulations shall be subject to affirmative resolution of the House of Assembly.
- (4) In subsection (3) of this section, the expression “subject to affirmative resolution of the House of Assembly” in relation to regulations means that any such regulations are not to come into operation unless and until approved by resolution of the House of Assembly.

14. Act binds the Crown.

This Act binds the Crown.

15. Consequential amendment to section 59 of Investment Funds Act (Ch. 369A).

The Investment Funds Act (Ch. 369A) is amended in paragraph (a) of subsection (2) of section 59 by the insertion of a comma after the word “Bahamas” and the addition of the words “or under the provisions of any law of The Bahamas”.

SCHEDULE

(section 2)

Agreement between the Government of the Principality of Monaco and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters – 18 September 2009

Agreement between the Government of the Republic of San Marino and the Government of the Commonwealth of The Bahamas Concerning Information on Tax Matters -24 September 2009

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of The Bahamas for the Exchange of information Relating to Taxes – 29 October 2009

Agreement between the Government of New Zealand and the Government of the Commonwealth of The Bahamas on the Exchange of Information with Respect to Taxes – 18 November 2009

Agreement between the Government of the People’s Republic of China and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Taxes 1 December 2009

Agreement between the Commonwealth of The Bahamas and the Argentine Republic for the Exchange of Information on Tax Matters – 3 December 2009

Agreement between the Kingdom of the Netherlands and the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters – 4 December 2009

Agreement between the Commonwealth of The Bahamas and the Kingdom of Belgium for the Exchange of Information Relating to Tax Matters – 7 December 2009

Agreement between the Government of the French Republic and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters – 7 December 2009

Agreement between the Government of the United Mexican States and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters – 23 February 2010

Agreement between The Kingdom of Norway and the Commonwealth of The Bahamas Concerning Information on Tax Matters – 10 March 2010

Agreement between the Government of the Kingdom of Sweden and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters – 10 March 2010

Agreement between the Republic of Finland and the Commonwealth of The Bahamas Concerning Information on Tax Matters– 10 March 2010

Agreement between the Kingdom of Denmark and the Commonwealth of The Bahamas Concerning Information on Tax Matters– 10 March 2010

Agreement between the Government of Iceland and the Government of the Commonwealth of The Bahamas for the Exchange of Information Relating to Tax Matters– 10 March 2010

Agreement between the Government of Greenland and the Government of the Commonwealth of The Bahamas Concerning Information on Tax Matters– 10 March 2010

Agreement between The Faroes and the Commonwealth of The Bahamas Concerning Information on Tax Matters– 10 March 2010

Agreement on Exchange of Information on Tax Matters between the Kingdom of Spain and the Commonwealth of The Bahamas – 11 March 2010

Agreement between the Government of Australia and the Government of the Commonwealth of The Bahamas on the Exchange of Information with Respect to Taxes – 30 March 2010

Agreement between the Federal Republic of Germany and the Commonwealth of The Bahamas on Civil and Criminal Tax Matters through Exchange of Information – 9th April 2010.

OBJECTS AND REASONS

The Bill proposes a framework legislation that enables The Bahamas to give effect to any treaty or international agreement as specified in the Schedule that provides for exchange of information in tax matters.

The passage of the Bill will effectively implement into domestic law the internationally agreed principle for the exchange of tax information universally endorsed by the United Nations, the G20 and the organization for Economic Cooperation and Development.

Clause 1 of the Bill provides for the short title and commencement of the Bill.

Clause 2 of the Bill provides for the interpretation of certain terms used in the Bill.

Clause 3 of the Bill states the purpose of the Bill which is to provide for the giving of assistance by persons in The Bahamas in connection with the obligations assumed by The Bahamas under the Agreement. This clause also contains a list of exceptions and safeguards where The Bahamas is not obliged to provide assistance, such as where legal privilege exists in respect of the information sought, or the provision of the information may be contrary to the public policy of The Bahamas.

Clause 4 of the Bill provides for the procedure to be followed in relation to each request for assistance.

Clause 5 of the Bill gives the Minister the power to require the production of information necessary to satisfy a request.

Clause 6 of the Bill provides for an application procedure to a judge to issue a warrant authorizing entry into premises for the purpose of obtaining information sought by a request.

Clause 7 of the Bill provides for the procedure to be followed once the Minister receives information which is in response to a production notice or compulsion order under sections 5 and 6 respectively.

Clause 8 of the Bill allows for information sought to be taken in the form of depositions.

Clause 9 of the Bill provides allows the Minister the discretion to permit representatives of a requesting state to enter The Bahamas to conduct interviews or examine records, in cases where the person to be interviewed or who can authorize an examination gives his consent in advance.

Clause 10 of the Bill provides for judicial review in relation to any decision of the Minister of Finance or any other person authorized to perform any function under the Bill.

Clause 11 of the Bill provides for the service of documents.

Clause 12 of the Bill provides for certain offences under the Bill which could carry upon conviction a penalty of twelve months or a fine of twenty-five thousand dollars.

Clause 13 of the Bill provides for the making of regulations in relation to the Act.

Clause 14 of Bill applies the Act to the Crown.

Clause 15 seeks to address a potential conflict between the powers granted to the Minister under the Bill in section 3 and certain confidentiality provisions contained in the Investment Funds Act (*Ch. 369A*). The clause allows introduces consistency between the Banks and Trust Companies regulation act and the Investment Funds Act.