

INTERNATIONAL TAX COOPERATION (AMENDMENT) BILL, 2017

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INTERNATIONAL TAX COOPERATION (AMENDMENT) BILL, 2017

A BILL FOR AN ACT TO AMEND THE INTERNATIONAL TAX COOPERATION ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the International Tax Cooperation Act (*No. 18 of 2010*) may be cited as the International Tax Cooperation (Amendment) Act, 2017.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Insertion of new Part Heading into the principal Act.

The principal Act is amended by the insertion immediately before section 1 of the following new Part Heading—

“PART I – PRELIMINARY”.

3. Amendment of section 2 of the principal Act.

The definition of the term “Agreement” in section 2 of the principal Act is amended by the deletion of the words “Schedule hereto” and the substitution therefor of the words “*First Schedule*”.

4. Insertion of new Part II Heading into the principal Act.

The principal Act is amended by the insertion immediately after section 3 of the following new Part II Heading —

“PART II – REQUEST BASED EXCHANGE OF TAX INFORMATION”.

5. Insertion of new Part III into the principal Act.

The principal Act is amended by the insertion immediately after section 9 of the following new Part III —

“ PART III – AUTOMATIC EXCHANGE OF TAX INFORMATION

9A. Automatic Exchange of Information.

An Agreement specified in the *First Schedule* may be amended to provide for the automatic exchange of financial account information for tax purposes by adopting the Articles in the manner specified in the Protocol as shown in the *Second Schedule*.

9B. Application of No. 37 of 2016.

Where an Agreement has been amended in accordance with subsection (1), the Automatic Exchange of Financial Account Information Act (*No. 37 of 2016*) shall apply.”.

6. Insertion of new Parts IV and V into the principal Act.

The principal Act is amended by the insertion immediately after section 11 of the following new Parts—

“ PART IV – ENFORCEMENT

11A. Compliance notice by competent authority.

(1) Without prejudice to any other action that may be instituted by the competent authority, if at any time it appears to the competent authority that—

- (a) a Reporting Financial Institution;
- (b) an Account Holder or Controlling person;
- (c) an Entity, or a director, officer or agent of that Entity; and
- (d) any other person,

has failed to comply with any of the requirements under this Act, the competent authority may, by written notice, direct any person referred to in paragraphs (a) through (d) to comply with the requirement within such period and on such terms and conditions as the competent authority may specify and such person shall comply with the notice.

(2) For the purposes of this Part, the terms “Reporting Financial Institution”, “Account Holder”, “Controlling Person”, “Entity” have the meaning ascribed to it as provided in the Automatic Exchange of Financial Account Information Act (*No. 37 of 2016*).

11B. Administrative penalty.

- (1) The competent authority may in its discretion impose an administrative penalty upon —
 - (a) a Reporting Financial Institution;
 - (b) an Account Holder or Controlling person;
 - (c) an Entity, or a director, officer or agent of that Entity; and
 - (d) any other person;who fails to comply with a notice of the competent authority.
- (2) If the competent authority considers in the public interest so to do, the competent authority may, upon a settlement or after a period of thirty days, order any person referred to in paragraphs (a) – (d) of subsection (1) that has breached any provision of this Act to pay to the competent authority an administrative penalty not exceeding three hundred thousand dollars for each contravention.
- (3) If any person referred to in paragraphs (a) – (d) of subsection (1) in breach of any provision of the Act solely by reason of failing to file with or deliver to the competent authority a document within the required time period, such person shall be subject to an administrative penalty of up to one thousand dollars, for every day from the date the document was required to be filed or delivered to the day the document was filed or delivered.

PART V – MISCELLANEOUS

11C. Confidentiality with respect to a request.

- (1) The particulars of and all matters relating to a request shall be treated as confidential.
- (2) A person who, in relation to a request—
 - (a) is notified of that request;
 - (b) is required to take any action;
 - (c) produces a document or supplies information;
 - (d) gives evidence; or
 - (e) complies with a search warrant,shall not disclose the fact of the receipt of the request or any of the particulars required or documents produced or information supplied, except to his legal representative and any other person that the competent authority may authorise.
- (3) This section is binding on the legal representative of a person to whom subsection (2) applies as if he were that person.

11D. Confidentiality with respect to exchange of information upon request and automatic exchange of information.

Any information provided to or received by the Competent Authority for the facilitation of the exchange of information upon request and automatic exchange of information or otherwise for tax purposes shall be kept confidential.

11E. Protection against contravention of confidentiality laws.

Any confidential information given by any person in conformity with this Act, facilitating the exchange of information upon request automatic exchange of information or information otherwise provided to the Competent Authority for tax purposes shall not contravene any other law governing the confidentiality of information.”.

7. Amendment of section 13 of the principal Act.

Subsection (2) of section 13 is amended by the deletion of the word “Schedule” and the substitution of the words “First Schedule”.

8. Amendment of Schedule of the principal Act.

The title of the Schedule to the principal Act is amended by the deletion of the word “Schedule” and the substitution therefor of the words “First Schedule”.

9. Insertion of new Second Schedule into the principal Act.

The principal Act is amended by the insertion immediately after the First Schedule of the following new Schedule —

“
SECOND SCHEDULE
(section 9A)

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF [JURISDICTION A] AND THE GOVERNMENT OF [JURISDICTION B] ON EXCHANGE OF INFORMATION ON TAX MATTERS, SIGNED AT [PLACE OF SIGNATURE] ON [DATE OF SIGNATURE]

The Government of [jurisdiction A] and the Government of [jurisdiction B] (hereinafter “the Contracting Parties”), desiring to amend the Agreement between the Government of [jurisdiction A] and the Government of [jurisdiction B] on Exchange of Information on Tax Matters, signed at [place of signature], on [date of signature] with a view to enabling their competent authorities to automatically and spontaneously transmit information to each other within the object and scope of this Agreement;

Have agreed as follows:

ARTICLE I

The following shall be added after Article 5 (Exchange of Information Upon Request):

“**Article 5A**

Automatic Exchange of Information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, the Contracting Parties shall automatically exchange information for the purposes referred to in Article 1 (Object and Scope of the Agreement).]

[Article 5B Spontaneous Exchange of Information

1. The competent authority of a Contracting Party shall, without prior request, forward to the competent authority of the other Contracting Party the information specified in Article 1 of which it has knowledge in the following circumstances:
 - a. the first-mentioned Contracting Party has grounds for supposing that there may be a loss of tax in the other Contracting Party;
 - b. a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Contracting Party which would give rise to an increase in tax or to liability to tax in the other Contracting Party;
 - c. business dealings between a person liable to tax in a Contracting Party and a person liable to tax in the other Contracting Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other or in both Contracting Parties;
 - d. a Contracting Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e. information forwarded to the competent authority of the first-mentioned Contracting Party by the competent authority of the other Contracting Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Contracting Party.
2. Each Contracting Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to the other Contracting Party.]

OR

[Article 5B Spontaneous Exchange of Information

The competent authority of a Contracting Party may spontaneously transmit to the competent authority of the other Contracting Party information that has come to the attention of the first-mentioned competent authority and that the first-mentioned competent authority considers foreseeably relevant to the accomplishment of the purposes referred to in Article 1 (Object and Scope of the Agreement). The competent authorities of the Contracting Parties may determine the procedures to be used to exchange such information.]”

ARTICLE II

1. Article 2 shall be replaced by the following:

“A Contracting 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.”

2. Paragraph 1 of Article 7 shall be replaced by the following:

“A Contracting Party shall not be required to obtain or provide information that the other Contracting 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 a Contracting Party may decline to assist where the request is not made in conformity with this Agreement.”

3. Paragraph 4 of Article 7 shall be replaced by the following:

“A Contracting Party may decline a request for information if the disclosure of the information would be contrary to public policy (order public).”

4. Paragraph 6 of Article 7 shall be replaced by the following:

“A Contracting Party may decline a request for information if the information is requested by the other Contracting Party to administer or enforce a provision of the tax law of that other Contracting Party, or any requirement connected therewith, which discriminates against a national of the first-mentioned Contracting Party as compared with a national of the other Contracting Party in the same circumstances.”

5. The last sentence of Article 8 is changed as follows:

“The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Contracting Party providing the information.”

6. Paragraph 2 of Article 13 shall be replaced by the following:

“In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 5A[, 5B] and 6.”

[ARTICLE III

The following shall be added at the end of Paragraph 3 of Article 15:

“- with respect to the automatic exchange of information foreseen in Article 5A for taxable periods beginning on or after 1 January [...], where there is no taxable period, for all charges to tax arising on or after 1 January [...];

- with respect to the spontaneous exchange of information foreseen in Article 5B for taxable periods beginning on or after 1 January [...], where there is no taxable period, for all charges to

tax arising on or after 1 January [...]”]

ARTICLE IV

[This Protocol is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.]

OR

[The Contracting Parties shall notify each other in writing when their necessary internal procedures for entry into force of this Protocol have been completed. This Protocol shall enter into force on the date of the later of such written notifications.]

In witness whereof the undersigned, being duly authorised thereto by the respective Contracting Parties, have signed this Protocol.

Done at [place of signature of the Protocol] in duplicate, this [date of signature of the Protocol] [, in [official language of jurisdiction A] and [official language of jurisdiction B], both texts being equally authentic].

FOR THE GOVERNMENT OF
[JURISDICTION A]:

FOR THE GOVERNMENT OF
[JURISDICTION B]: ”.

OBJECTS AND REASONS

The principle Act is being amended to provide for a Protocol to amend Tax Information Exchange Agreements to facilitate automatic exchange of financial accounts information for tax purposes under and to strengthen confidentiality and enforcement of providing financial information under this Act .

Clause 5 of the Bill inserts a new 9A and 9B to provide that existing Tax Information Exchange Agreements contained in the First Schedule may be amended to allow for the automatic exchange of financial account information for tax purposes by adopting the articles in the Protocol contained in the Second schedule. Where an agreement has been amended the Automatic Exchange of Financial Account Information Act (No. 37 of 2016) shall apply for the procedure to giving effect to the automatic exchange of information.

Clause 6 of the Bill amends the principle Act to insert two new parts. A new section 11A and section 11B has been inserted to give the competent authority power to issue written notices directing the reporting financial institution to comply with the Act within a specified period and on specified conditions. The competent authority may impose an

administrative penalty if the person or institution named in the notice fails to comply with it.

Clause 6 also inserts sections 11C through 11E to strengthen the requirement for confidentiality with respect to requests received and information supplied to the competent authority.