

*Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act
2006, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

2010 No.

TAXES

The International Tax Enforcement (Bahamas) Order 2010

Made - - - - [day] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(1) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Bahamas) Order 2010.

Tax information exchange agreement to have effect

2. It is declared that—
 - (a) the agreement set out in the Schedule to this Order has been made with the Government of the Commonwealth of The Bahamas with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the agreement; and
 - (b) it is expedient that the agreement should have effect.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
Statutory Instrument: The International Tax Enforcement (Bahamas) Order 2010 No. 2684

Name
Clerk of the Privy Council

SCHEDULE

Article 2

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

Whereas:

the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

the Government of the Commonwealth of The Bahamas on 15 March 2002 entered into a political commitment to the OECD's principles of effective exchange of information;

Now therefore, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of The Bahamas, desiring to facilitate the exchange of information with respect to certain taxes, have agreed as follows:

ARTICLE 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. 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 obliged 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. This Agreement applies to existing taxes of every kind and description imposed by either Contracting Party.
2. This Agreement shall apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. 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.

ARTICLE 4

Definitions

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

- a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised.
- b) the term “The Bahamas” means the Commonwealth of The Bahamas, encompassing the land, the territorial waters, and in accordance with international law and the laws of The Bahamas any area outside the territorial waters inclusive of the exclusive economic zone and the seabed and subsoil over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources;
- c) the term “Contracting Party” means the United Kingdom or The Bahamas as the context requires;
- d) the term “competent authority” means
 - i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - ii) in the case of The Bahamas, the Minister of Finance or the Minister’s duly authorised delegate;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) 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;
- h) 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;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) 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 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;
- k) the term “tax” means any tax to which this Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) 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;
- r) the term “national” means

- i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom; and
 - ii) in relation to The Bahamas, any individual possessing the nationality or citizenship of The Bahamas; or any legal person, partnership, association or other entity deriving its status as such from the laws in force in The Bahamas.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of 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 authorities for the purposes specified in Article 1 of this Agreement, have the authority to obtain and provide, upon request:
 - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - b) information regarding the 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 and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations. Notwithstanding the preceding sentence, 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. The competent authority of the applicant Party shall provide the following information in writing to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - a) the identity of the taxpayer under examination or investigation;
 - b) the identity of the person in respect of whom information is requested, if that person is not also the taxpayer in subparagraph a) of this paragraph;
 - 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;

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- d) the period of time with respect to which the information is requested;
 - e) the tax purpose for which the information is sought including –
 - i) the provision under the applicant Party’s tax or other law with respect to which the information is sought;
 - ii) whether the matter is a criminal tax matter; and
 - iii) the reasons for believing that the information requested is foreseeably relevant to the applicant Party’s tax administration and enforcement with respect to the person identified in subparagraph a) of this paragraph;
 - f) the grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person subject to 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 of the applicant Party or in the normal course of its administrative practice and that the request 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 acknowledge receipt of the request to the competent authority of the applicant Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall use its best endeavours to forward the requested information to the applicant Party with the least possible delay.

ARTICLE 6

Tax Examinations Abroad

1. The requested Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested 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 territory of the requested Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party 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.

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:

- a) under its own laws for purposes of the administration or enforcement of its own tax laws; or
 - b) in response to a valid request from the requested Party under this Agreement.
2. The Competent Authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
 3. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, but this paragraph shall not prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
 4. This Agreement shall not impose on a requested Party the obligation to supply information which is 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.
 5. The requested Party may decline a request for information if the disclosure of the information would be contrary to its national security interests or public policy.
 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.
 7. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

ARTICLE 8

Confidentiality

1. Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction 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 or the oversight of the above. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction (including a foreign Government) without the express written consent of the competent authority of the requested Party.
2. Where information provided pursuant to this Agreement for a criminal tax purpose is to be used subsequently for a non-criminal tax purpose (and vice versa) the Competent Authority which supplied the information shall be notified of this change either before the change is made where this does not give rise to disproportionate difficulties, or within a reasonable time of the change taking effect.

ARTICLE 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

ARTICLE 10

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to,

the terms of this Agreement.

ARTICLE 11

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 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, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

ARTICLE 12

Entry into Force

Each of the Contracting Parties shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall come into force on the date of the later of these notifications and shall thereupon have effect:

- a) for criminal tax matters for all taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004; and
- b) with respect to all other matters covered by this Agreement, for taxable periods beginning on or after the date of entry into force of this agreement, or, where there is no taxable period, for all charges to tax arising on or after the date on which this Agreement enters into force.

ARTICLE 13

Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination through diplomatic channels.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notice of termination by the other Contracting Party.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement

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

DONE in duplicate at Nassau, The Bahamas, on this 29th day of October 2009.

**For the Government of the United Kingdom
of Great Britain and Northern Ireland:**

Jeremy Cresswell

**For the Government of the Commonwealth
of The Bahamas:**

Zhivargo S. Laing

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an agreement (“the Agreement”) dealing with the exchange of information for tax purposes between the Government of the United Kingdom and the Government of the Commonwealth of The Bahamas. This Order brings the Agreement into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Agreement.

The Agreement provides for the exchange of information foreseeably relevant to the administration or enforcement of the taxes covered by the Agreement by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect as follows:

- (a) in respect of requests relating to criminal tax matters for taxable periods beginning on or after 1st January 2004 or, where there is no taxable period, for charges to tax arising on or after 1st January 2004; and
- (b) for all other requests, in relation to taxable periods beginning on or after the date of entry into force or, where there is no taxable period, for all charges to tax arising on or after that date.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.