

SUBSIDIARY LEGISLATION 123.139

**EXCHANGE OF INFORMATION (TAX MATTERS)
(COMMONWEALTH OF THE BAHAMAS) ORDER**

15th January, 2013

LEGAL NOTICE 26 of 2013.

1. The title of this order is the Exchange of Information (Tax Matters) (Commonwealth of The Bahamas) Order. Citation.

2. It is hereby declared:

Arrangements to
have effect.

- (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Commonwealth of The Bahamas with a view to preventing fiscal evasion in relation to taxes of every kind and description imposed by the laws of the Commonwealth of The Bahamas;
 - (b) that it is expedient that those arrangements should have effect;
 - (c) that the Agreement has entered into force on 30 October 2012.
- _____

SCHEDULE

(Article 2)

AGREEMENT BETWEEN
THE GOVERNMENT OF MALTA AND
THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of Malta and the Government of the Commonwealth of The Bahamas, desiring to facilitate the exchange of information with respect to 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 and 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 to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

A requested 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.

Article 3

Taxes Covered

1. This Agreement shall apply to taxes of every kind and description in the Contracting Parties.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. 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 the Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial

waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;

- (b) the term "The Bahamas" means the Commonwealth of The Bahamas, and when used in a geographical sense encompasses its land and territorial waters, subject to the laws of The Bahamas, and any area outside its territorial waters, inclusive of the exclusive economic zone and the seabed and subsoil thereof, over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, in accordance with international law;
- (c) the term "applicant Party" means the Contracting Party requesting information;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in the case of Malta: the Minister responsible for finance or his authorised representative;
 - (ii) in the case of The Bahamas: the Minister of Finance or his authorised representative;
- (f) the term "Contracting Party" means Malta or The Bahamas, as the context requires;
- (g) 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;
- (h) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- (i) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the information requested;
- (j) the term "information" means any fact, statement or record in any form whatever;
- (k) the term "person" includes an individual, a company and any other body of persons;
- (l) 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;
- (m) 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;
- (n) 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 or scheme 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;

- (o) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (p) the term "requested Party" means the Contracting Party requested to provide information;
- (q) the term "tax" means any tax to which this Agreement applies.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that 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 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 the 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 the 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, "Anstalten" 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. Further, 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;
- (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 citation of the legal authority under the applicant Party's tax law with respect to which the information is sought; and
 - (ii) whether the matter is a criminal tax matter;
- (f) the reasons for considering 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;
- (g) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (h) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (i) 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 administrative practice and that it is in conformity with this Agreement;
- (j) 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 forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

1. A Contracting Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other 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 first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

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 under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information subject to legal privilege, or to supply information which 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.

3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

5. 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.

Article 8

Confidentiality

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. 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 without the express written consent of the competent authority of the requested Party.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by 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 the Agreement.

Article 11

Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 12

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the 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 and 6.

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

4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 13

Entry into Force

This Agreement shall enter into force when each Contracting Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect for all matters covered in Article 1, in respect of all taxable periods beginning on or after the first day of January immediately following that date or, where there is no taxable period, in respect of all charges to tax arising on or after that date.

Article 14

Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.

2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing, through diplomatic channels, to the other Party. 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 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 this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE in duplicate at London this 18th day of January 2012 in the English language.

Joseph Zammit Tabona
For the Government of
Malta

Paul Farquharson
For the Government of
the Commonwealth of The Bahamas
