

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ORDER, 2016

ARRANGEMENT OF SECTIONS

Section

1. . Citation.
 2. . Application of Part 1 of the Act.
- SCHEDULE

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2016 NO. 28

**Mutual Legal Assistance (Tax Matters) Act, 2003
(No. 18 of 2003)**

Mutual Legal Assistance (Tax Matters) Order, 2016

[Gazetted 5th May, 2016]

The Minister, in exercise of the power conferred by section 3 (3) of the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003) makes this Order.

- Citation.
1. This Order may be cited as the Mutual Legal Assistance (Tax Matters) Order, 2016.
- Application of Part 1 of the Act. No. 18 of 2003. Schedule.
2. Part 1 of the Mutual Legal Assistance (Tax Matters) Act, 2003 applies to the Agreements reproduced in the Schedule.

Schedule

[Section 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND THE GOVERNMENT OF THE ISLE OF MAN FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

THE Government of the British Virgin Islands and the Government of the Isle of Man have agreed to conclude the following Agreement for the exchange of information relating to tax matters which contains obligations on the part of the Parties only:

ARTICLE 1

Object and Scope of the Agreement

The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification or collection of such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal 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 10. 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 the following taxes imposed:
 - a) by the Isle of Man:
 - (i) the Income Tax; and
 - b) by the British Virgin Islands
 - (i) the income tax;

- (ii) the payroll tax; and
- (iii) the property tax.

2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 4

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) “the British Virgin Islands” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
 - b) “the Isle of Man” means the island of the Isle of Man, including its territorial sea, in accordance with international law;
 - c) “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;
 - d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - e) “competent authority” means:
 - (i) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - (ii) in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate;
 - f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
 - g) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;

- h) “information” means any fact, statement or record in any form whatever;
- i) “information gathering measures” means laws and administrative, regulatory or judicial procedures that enable a requested Party to obtain and provide the requested information;
- j) “Party” means the British Virgin Islands or the Isle of Man as the context requires;
- k) “person” includes an individual, a company and any other body or group of persons;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “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) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- o) “requested Party” means the Party to this Agreement requested to provide, or which has provided, information in response to a request;
- p) “requesting Party” means the Party to this Agreement submitting a request for information or having received information from the requested Party;
- q) “tax” means any tax to which the Agreement applies.

2. As regards the application of this Agreement at any time by a 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 in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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 necessary to provide the requesting 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 requesting 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 Party shall ensure that it has the authority, subject to the terms of Article 1, and within the constraints of Article 2, to obtain and provide, through its competent authority and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
- (ii) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Parties to obtain or provide:

- a) 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; or
- b) information from a period falling outside of the legally required time period for retaining the information in the jurisdiction of the requested Party, but only where that information is in fact no longer kept.

6. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

7. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. 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 requesting Party and shall notify the competent authority of the requesting 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 complete request, including if it encounters obstacles in furnishing the

information or it refuses to furnish the information, it shall immediately inform the competent authority of the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 6

Tax Examinations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the Requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:
 - a) where the request is not made in conformity with this Agreement;
 - b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - c) where the disclosure of the information requested would be contrary to public policy of the requested Party.

2. This Agreement shall not impose on a requested Party the obligation to provide information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.

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

4. The requested Party shall not be required to obtain or provide information which, if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its own laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

ARTICLE 8

Automatic Exchange of Information

1. The competent authorities of the Parties may automatically transmit information to each other for the purposes referred to in Article 1. The competent authorities shall determine the items of information to be exchanged pursuant to this Article and the procedures to be used to exchange such items of information.

2. The competent authorities may mutually agree on additional procedures to be used for the purposes of this Article.

ARTICLE 9

Spontaneous Exchange of Information

The competent authority of a Party may spontaneously transmit to the competent authority of the other Party information that has come to the attention of the first-mentioned competent authority and that the first-mentioned competent authority supposes to be foreseeably relevant to the accomplishment of the purposes referred to in Article 1. The competent authorities shall determine the procedures to be used to exchange such information.

ARTICLE 10

Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 11

Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 12

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective 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 Parties may mutually agree on the procedures to be used under Articles 5, 6, 8, 9 and 11.

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

ARTICLE 13

Entry into Force

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:

- a) with respect to criminal tax matters on that date; and
- b) with respect to automatically transmitting information under Article 8 for periods beginning on or after 1 January 2016; and

- c) with respect to all other matters covered in Article 1, for taxable periods beginning on or after 1 January 2016, or where there is no taxable period, for all charges to tax arising on or after 1 January 2016.

ARTICLE 14 Termination

1. This Agreement shall remain in force until terminated by a Party.
2. Either Party may terminate the Agreement by giving notice of termination in writing to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of three months after the date of receipt of notice of termination by the other Party.
3. In the event of termination, both Parties shall remain bound by the provisions of Article 10 with respect to any information obtained under the Agreement. All requests received by the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

DONE at Douglas, Isle of Man this 21st day of March, 2016 and at Road Town, Tortola, British Virgin Islands this 30th day of March, 2016, in duplicate, in the English language.

For the Government
of the British Virgin Islands:

(Hon. Dr. D. Orlando Smith, OBE)
Premier of the British Virgin Islands

For the Government
of the Isle of Man:

(Hon. William Edward Teare)
Minister of the Isle of Man Treasury

Made by the Minister this 2nd day of May, 2016.

(Sgd.) Dr. Orlando Smith, OBE,
Minister for Finance.