



ANGUILLA

A BILL FOR
**TAX INFORMATION EXCHANGE
(INTERNATIONAL CO-OPERATION) ACT, 2015**

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I Assent

Christina Scott
Governor

Date

ANGUILLA

No. /2015

A BILL FOR

TAX INFORMATION EXCHANGE (INTERNATIONAL CO-OPERATION) ACT, 2015

An Act to give effect to agreements entered into by the Government of Anguilla for the exchange of information for tax purposes:

[Gazette Dated: , 2015] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla as follows—

Interpretation

1. (1) In this Act—

“agreement” means an agreement for the provision of information for tax purposes entered into by the Government of Anguilla, or by Anguilla as authorised by the Government of the United Kingdom, with another jurisdiction and includes—

- (a) a Tax Information Exchange Agreement hereinafter referred to as “TIEA”;
- (b) a Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of Anguilla in relation to agreements with the participating jurisdictions listed in the table in Schedule 1 to improve international tax compliance based on the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (Common Reporting Standard hereinafter referred to as the “CRS”);
- (c) Multilateral Convention on Mutual Administrative Assistance in Tax Matters;

- (d) Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Anguilla to improve international tax compliance;
- (e) the Agreement made between the Government of the United States of America and the Government of Anguilla to improve international compliance and to implement FATCA (Financial Account Tax Compliance Act) hereinafter referred to as “FATCA agreement”;
- (f) an arrangement between Anguilla and the United Kingdom for the exchange of tax information;
- (g) any other arrangement or agreement between Anguilla and another country or countries for the exchange of information, including automatic exchange;

“automatic exchange of information” means the systematic and periodic exchange of information for tax purposes between parties to the relevant agreement in the manner and to the specifications agreed between the parties or their competent authorities;

“authorised officer” means—

- (a) a police officer of the rank of Inspector or above; or
- (b) a police officer who is authorised in writing by a police officer referred to in paragraph (a) to act on his behalf;

“competent authority” means—

- (a) in the case of Anguilla—
 - (i) the Comptroller of Inland Revenue in relation to the FATCA agreement,
 - (ii) the Permanent Secretary in relation to all other agreements; and
- (b) in all other cases, an authority designated by a country to make and respond to requests for information under an agreement;

“electronic” means in relation to technology having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“information” means any fact, statement or record in any form whatever that is foreseeably relevant or material to tax administration and enforcement;

“legal representative” means an attorney, solicitor or other legal representative;

“parties” means parties to an agreement;

“Permanent Secretary” means Permanent Secretary in the Ministry of Finance and includes any person acting as, or, to the extent of his authority, performing the functions of, the Permanent Secretary, whether as a designate under this Act or otherwise;

“person” includes a financial institution as defined by the relevant agreement;

“proceedings” means civil or criminal proceedings;

“relevant agreement” means the applicable agreement as the context requires;

“request” means a request made under an agreement by a requesting party;

“requesting party” means a competent authority that makes a request to the competent authority of Anguilla for assistance under an agreement;

“tax purposes” means any tax related purpose for which information may be provided under an agreement or matters incidental thereto;

“taxation matter” includes a matter relating to the collection, calculation or assessment of a tax covered by an agreement.

Implementation

2. (1) This Act shall apply for the purpose of—

(a) giving effect to the terms of an agreement for the provision of information in taxation matters including the automatic exchange of information; and

(b) the provision of information to a requesting party in taxation matters on request;

including for the purposes of any proceedings taken by a requesting party, or by any persons acting on their behalf, connected with, arising from, related to, or resulting from taxation matters.

(2) Nothing in this Act shall require the provision of information under an agreement in relation to a taxation matter that arose prior to the date of commencement of the International Cooperation (Tax Information Exchange Act). R.S.A. c. I23, except where the terms of an agreement otherwise so provide.

(3) An agreement shall, for such period as is specified in the agreement, have legal effect in Anguilla.

Competent authority

3 (1) The competent authority shall have the power to do all things necessary or convenient to be done for or in connection with the performance of his functions under this Act.

(2) Without prejudice to subsection (1) the principal functions of the competent authority under this Act include—

(a) providing assistance in relation to—

(i) obtaining information held by any person in Anguilla,

(ii) taking the evidence or statement of any person in Anguilla,

(iii) providing information and articles of evidence,

(iv) serving documents, and

- (v) executing searches and seizures;
- (b) facilitating the automatic exchange of information for tax purposes in accordance with an agreement and any implementation arrangements made under an agreement;
- (c) ensuring compliance in Anguilla with an agreement;
- (d) making determinations in accordance with the terms of an agreement as to any costs and the apportionment of such costs relating to or arising from any request;
- (e) entering into agreements with competent authorities under an agreement relating to the operation therefor including matters in relation to the automatic exchange of information; and
- (f) performing such functions as may be prescribed under this or any other Act.

(3) The Permanent Secretary may delegate to any person or authority, all or any of his functions under this Act.

Procedure upon receipt of request

4. (1) Upon receipt of a request, the Permanent Secretary shall determine whether the request complies with the relevant agreement.

(2) If the Permanent Secretary determines that the request complies with the relevant agreement, the Permanent Secretary shall, subject to section 5, execute the request in accordance with the relevant agreement and this Act.

(3) If the Permanent Secretary determines that the request does not comply with the relevant agreement, or if any of the grounds referred to in section 5 are met, he shall promptly inform the requesting party and specify his objections to the request.

(4) The Permanent Secretary may request such additional information from the requesting party as may be necessary to assist the Permanent Secretary in executing the request.

Grounds for declining a request for information

5. (1) The Permanent Secretary may decline a request for information if—

- (a) the requested information is not foreseeably relevant to the administration or enforcement of the tax laws of the requesting party;
- (b) the information is protected from disclosure under the laws of Anguilla on the grounds that the information requested is subject to legal professional privilege;
- (c) the competent authority of the requesting party would not be able to obtain the information—
 - (i) under its own laws for the purposes of administration or enforcement of its tax laws, or

- (ii) in response to a similar valid request from the Permanent Secretary under the relevant agreement;
- (d) the disclosure of the information would be contrary to public policy or national security;
- (e) the supply of information would disclose a trade, business, industrial, commercial or professional secret or trade process;
- (g) the requesting party does not agree to pay the costs of providing assistance in accordance with the relevant agreement, whether incurred or likely to be incurred by the Permanent Secretary or any other person.

Request by notice for production of information

6. (1) Where the competent authority considers it necessary to obtain specified information or information of a specified description from any person in Anguilla, the competent authority shall issue a notice in writing requiring that person to deliver to the competent authority or to make available for inspection by the competent authority, such documents specified in the notice that are in his possession or control.

(2) The notice may require the information to be—

- (a) provided within a specified time;
- (b) provided in the form as the competent authority may require; and
- (c) authenticated in the manner that the competent authority may require.

(3) The competent authority may extend the time specified in the notice if, in its opinion, the circumstances so warrant.

(4) Where copies of documents are delivered, the competent authority may require that the original documents be made available for inspection by the competent authority.

(5) Failure to comply with a requirement under subsection (2) is a failure to comply with the notice.

(6) Where information is produced under this section—

- (a) the Permanent Secretary may make copies of all or part of such information; and
- (b) where a person claims a lien on a document, the production is without prejudice to the lien.

(7) A notice under this section—

- (a) does not require a person to produce or to give access to items subject to legal professional privilege; and

- (b) has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

Notification of application to the Judge for Production Order

7. (1) A person against whom an order to produce information is sought under section 8 shall be given 7 days' notice by the Permanent Secretary of the intention to apply for such order and such person is entitled to appear and be heard at the hearing of the application.

(2) Notwithstanding subsection (1), the Permanent Secretary is not required to give notice—

- (a) if, the Judge is satisfied that this would prejudice the investigation of the offence; or
- (b) where the requesting party requests that such person is not notified of the order and the Judge is satisfied that it is not in the interest of justice to give notice.

Production Orders

8. (1) Where the competent authority considers it necessary to obtain specified information or information of a specified description from any person and either—

- (a) a notice under section 6 has not been complied with; or
- (b) there are reasonable grounds for suspecting that a notice under section 6 will not be complied with, the competent authority shall apply to a Judge for an order to produce such information, in accordance with section 6.

(2) If, on the application, the Judge is satisfied that the conditions in subsection (3) are fulfilled, the Judge may make an order that the person who appears to the Judge to be in possession or control of the information, within the period specified in the order—

- (a) produce it to the competent authority to take away; or
- (b) give the competent authority access to it.

(3) The conditions referred to in subsection (2) are that—

- (a) the competent authority has certified the request in compliance with the relevant agreement, and this Act; and
- (b) where the request is made under a TIEA—
 - (i) there are reasonable grounds for believing that the information requested is in the possession of, or under the control of, a person in Anguilla, and
 - (ii) there are no reasonable grounds for declining the request under this Act or the relevant TIEA.

(4) The period to be specified in the order is 7 days, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) An order of the Judge has effect as if it was an order of the court.

(6) When the Judge makes an order under subsection (2)(b) in relation to information held on any premises, the Judge may also, on the application of the competent authority, issue a warrant for the competent authority, accompanied by an authorised officer, to enter the premises to obtain access to the information.

(7) An order under this section—

- (a) does not require a person to produce or to give access to items subject to legal professional privilege; and
- (b) has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

Receiving evidence

9. (1) If, pursuant to a request, a person is required to give evidence, the Permanent Secretary shall apply to a Judge for the Judge to receive the evidence as appears to the Permanent Secretary to be appropriate for the purpose of giving effect to the request.

(2) If, on application under subsection (1), the Judge is satisfied that the conditions of subsection (3) are fulfilled, the Judge shall issue a summons requiring the person named in the application to attend within such period as the Judge may specify and give such evidence as appears to the Judge to be appropriate for the purpose of giving effect to the request.

(3) The conditions referred to in subsection (2) are that the Judge is satisfied that—

- (a) the Permanent Secretary has certified the request in compliance with the relevant agreement and this Act; and
- (b) where the request is made under a TIEA—
 - (i) there are reasonable grounds for believing that the information requested is in the possession of, or under the control of, a person in Anguilla, and
 - (ii) there are no reasonable grounds for declining the request under this Act or the relevant TIEA.

(4) The Judge may, in pursuance of an application made under subsection (1), require the production of documents or things, take evidence under oath and exercise any other power that the Judge may exercise for the purpose of compelling the production of evidence.

(5) A person is not compelled in proceedings under this section to give evidence that he cannot be compelled to give in proceedings before a court in Anguilla.

(6) The period to be specified by the Judge under subsection (2) shall be 7 days, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

Search and seizure

- 10.** (1) Where a person fails to comply with—
- (a) a notice by the competent authority for the production of information under section 6; or
 - (b) an order by the Judge for the production of information under section 8; or
 - (c) a summons requiring a person to give evidence under section 9, the Judge may, on proof upon oath that the notice, order or summons has been served, issue a warrant.
- (2) The Judge may issue a warrant under subsection (1) if satisfied that—
- (a) there is no lawful excuse for the failure of a person to comply with a notice or order under sections 6 and 8 respectively or to appear to give evidence under section 9; and
 - (b) the ability to give effect to the request might be seriously prejudiced unless an authorised officer could secure immediate access to the information.
- (3) Notwithstanding sections 6, 8 and 9, where the Judge is satisfied—
- (a) that a request under section 6 or an order under section 8 would not be appropriate because—
 - (i) it is not practicable to communicate with any person entitled or authorised to produce the information,
 - (ii) it is not practicable to communicate with any person entitled or authorised to grant access to the information or entitled or authorised to grant entry to the premises on which the information is situated, or
 - (iii) the ability to give effect to the request might be prejudiced unless an authorised officer could secure immediate access to the information; or
 - (b) that it would not be appropriate to issue a summons under section 9 because it is probable that such person will not attend to give evidence unless compelled to do so; and
 - (c) that the conditions referred to in subsection (4) are fulfilled;
- the Judge may, upon application by the competent authority, issue a warrant in the first instance.
- (4) The conditions referred to in subsection (3) are that the Judge is satisfied that—
- (a) the Permanent Secretary has certified the request in compliance with the agreement and this Act;
 - (b) where the request is made under a TIEA—

- (i) there are reasonable grounds for believing that the information requested is in the possession of, or under the control of, a person in Anguilla; and
- (ii) there are no reasonable grounds for declining the request under this Act or the relevant TIEA.

(5) A warrant referred to in subsection (1) or (3) may provide for one or more of the following—

- (a) direct an authorised officer to do any one or more of the following—
 - (i) enter any premises,
 - (ii) inspect or examine any document that relates or may relate to information required to be produced under sections 6, 8 or 9,
 - (iii) seize such information as appears to be appropriate for the purpose of giving effect to the request for a sufficient time to make a copy of it,
 - (iv) bring the person named in the warrant before the Judge to give evidence at a time and place specified in the warrant,
- (b) order the information seized to be produced to the Judge;
- (c) direct any occupant of the premises to assist the authorised officer in any manner the Judge specifies; or
- (d) restrain any person from impeding the authorised officer from entering the premises or from carrying out the authorised officer's duties.

(6) Upon receipt of information referred to in subsection (5)(b), the Judge may review the information to determine whether the information—

- (a) appears to be appropriate for the purpose of giving effect to the request; and
- (b) is subject to legal professional privilege.

(7) If and to the extent that the Judge is satisfied that the information referred to in subsection (5)(b)—

- (a) appears to be appropriate for the purpose of giving effect to the request; and
- (b) is not subject to legal professional privilege;

the Judge may furnish the information, or any part of the information, to the Permanent Secretary in accordance with section 11.

(8) The powers conferred by subsections (1) and (3) are exercisable in relation to any information required to be provided under sections 6, 8 or 9 whether or not any criminal proceedings have been brought for an offence under section 25.

Transmission of evidence

11. (1) The evidence received by the Judge under section 9 or information referred to in section 10 shall be furnished to the Permanent Secretary without delay for transmission to the requesting party.

(2) Where the evidence or information consists of a document, the original or a copy shall be transmitted and where it consists of another article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary to comply with the request.

Assistance by authorised officers

12. Notwithstanding any other Act, if giving effect to any request requires the service of any notice, order, summons or any other document, an authorised officer may assist in such service as requested by the competent authority or Judge.

Form of production of electronic information

13. If the information to be produced under sections 6, 8 or 9 exists electronically it is to be produced in a format that allows the information to be readily accessible, and if it is to be taken away, then it should also be stored in a manner that is appropriate for that purpose.

Right to legal representative

14. A person required to give evidence or to produce information under sections 6, 8 or 9 shall have the right to a legal representative at such person's own cost.

Authentication of official documents

15. For the purpose of this Act, the competent authority may authenticate official documents or records in Anguilla containing information produced for the purpose of giving effect to a request pursuant to an agreement or this Act.

Service of notices and documents

16. (1) For the purposes of this Act, a notice or document may be served—

(a) by hand delivery; or

(b) by registered post;

to the registered or other office of the addressee, or to his last known address.

(2) Where a person states in an affidavit that they have served a notice or document in accordance with subsection (1) such affidavit shall amount to sufficient proof of service.

Judicial review

17. Nothing in this Act shall exclude or restrict the right of any person aggrieved by a decision of the competent authority or any other person with any function to make a decision under this Act to challenge that decision, in so far as it affects such person, by seeking review of the decision by a Judge of Anguilla.

Immunity

18. Neither the competent authority, nor any person to whom or authority to which any of the functions of the competent authority have been delegated, is liable in damages for anything done or omitted in the discharge of their functions under this Act, unless it is shown that the act or omission was in bad faith.

Protection of persons disclosing confidential information

19. (1) A person who pursuant to this Act or an agreement—

- (a) divulges any confidential information; or
- (b) gives evidence in compliance with an order, notice or summons; or
- (c) provides information to the competent authority to facilitate the automatic exchange of information
- (d) or otherwise provides information to the competent authority for tax purposes;

does not commit an offence under the Confidential Relationships Act, or under any other law in Anguilla, by reason only of the disclosure or the giving of the evidence.

(2) The disclosure, testimony, provision of information for the facilitation of the automatic exchange of information or provision of any information to the competent authority for tax purposes by a person to whom subsection (1) applies shall be deemed not to be a breach of any confidential relationship between that person and any other person, and no civil claim or action whatsoever shall lie against—

- (a) the person making the disclosure, giving testimony, providing information to facilitate the automatic exchange of information or providing information for tax purposes; or
- (b) the person's principal or employer, by reason of the disclosure, testimony, provision of information for the facilitation of the automatic exchange of information or information otherwise provided to the competent authority for tax purposes.

Restriction of Confidential Relationships Act

20. Sections 2 and 3 of the Confidential Relationships Act R.S.A. c. C85, shall be deemed not to apply to confidential information given by any person in conformity with an order or notice issued in pursuance of a request under this Act, facilitating the automatic exchange of information or information otherwise provided to the competent authority for tax purposes.

Confidentiality with regard to a request

21. (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.

Confidentiality of information

22. Information provided to or received by the competent authority for the facilitation of the automatic exchange of information or otherwise for tax purposes shall be kept confidential.

Restriction on use of information

23. (1) A requesting Party shall not, without the prior written consent of the competent authority, transmit or use information or evidence provided under this Act for purposes, investigations or proceedings other than those within the scope of the relevant agreement.

(2) Before the competent authority gives consent under subsection (1) in relation to information or evidence provided under this Act, the competent authority shall apply to a Judge for directions.

(3) A person who pursuant to this Act or an agreement receives confidential information, shall not transmit or use such information for purposes, other than those within the scope of the relevant agreement.

Legal Professional privilege

24. (1) Information is subject to legal professional privilege where this information would reveal confidential communications between a client and his legal representative where such communications are—

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings;

but does not apply to any information or other matter, which is communicated or given with the intention of furthering a criminal purpose.

(2) Where there is a dispute as to whether or not information is subject to legal professional privilege, this matter shall be determined by a Judge on the application of either party.

(3) For the purposes of this section “party” means the following—

- (a) the requesting party; or

- (b) a person against whom an order to produce information is sought or his legal representative.

(4) Legal professional privilege shall be governed by the laws of Anguilla.

Offences and penalties

25. (1) A person who is required under sections 6 or 8 to produce any information that is in his possession or is under his control and who—

- (a) without lawful excuse fails to do so, within the time specified by the Permanent Secretary by notice or a by a Judge by order; or

- (b) alters, destroys, mutilates, defaces, conceals or removes the information;

commits an offence and is liable on summary conviction, to imprisonment for a term of 2 years or a fine of \$ 10,000 or to both;

(2) A person who, when required to do so in accordance with the instructions given by a Judge, or any summons served upon him under section 9, refuses to attend as required or to give evidence in response to a request, commits an offence and is liable on summary conviction to imprisonment` for a term of 1 year or to a fine of \$5,000 or to both.

(3) A person who obstructs or in any way impedes an authorised officer in the carrying out of his duties in the execution of a warrant issued pursuant to section 10(5) commits an offence and is liable on summary conviction to imprisonment for a term of one year or to a fine of \$5,000 or to both.

(4) A person who divulges information to any person, other than his legal representative, contrary to sections 21 and 22 commits an offence and is liable on summary conviction, to imprisonment for a term of 6 months or a fine of \$2,000 or to both.

Directions

26. The Competent Authority may make Directions providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act and an agreement and their enforcement and administration.

Regulations

27. (1) The Governor in Council may make regulations providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act, including an agreement, and its enforcement and administration.

(2) Without prejudice to the generality of the foregoing the Governor in Council may make regulations prescribing—

- (a) penalties for non-compliance with the Regulations, not exceeding \$3,000;

- (b) offences against the Regulations, prescribing a term of imprisonment not exceeding 12 months, a fine not exceeding \$50,000 or both.

Citation

28. This Act may be cited as the Tax Information Exchange (International Co-operation) Act, 2015.

Repeals

29. The International Corporation (Tax Information Exchange Agreement) Act, R.S.A. c I23 is repealed.

Transitional provision

30. In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.

Leroy C. Rogers
Speaker

Passed by the House of Assembly this day of , 2015

Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS**(The Objects and Reasons do not form part of this Bill)**

The International Co-operation (Tax Information Exchange Agreements) (Amendment) Bill amends the International Co-operation (Tax Information Exchange Agreements) Act, R.S.A. c I23 to give effect to agreements entered into by the Government of Anguilla for the automatic exchange of tax information and to widen the powers of the Competent Authority to facilitate the enforcement of these agreements.

The Bill consists of 30 clauses.

Clause 1 is the Interpretation section of the Bill

Clause 2 details the purpose of the Bill.

Clause 3 outlines the powers of duties of the Competent Authority

Clause 4 provides the procedure to be followed by the Competent Authority on receipt of a request for information

Clause 6 provides the grounds under which a request for information may be declined

Clause 7 provides that notification of an application to the Judge for a production order, must be given to the person against whom the production order is sought.

Clause 8 authorises that Competent Authority to apply to the Judge for a production order to be issued to a person in possession or control of information.

Clause 9 enables the Court to receive evidence for the purpose of giving effect to a request.

Clause 10 empowers the Competent Authority with the assistance of a police officer to search and seize information in compliance with a request.

Clause 11 provides for the transmission to the Competent Authority of evidence received by a Judge

Clause 12 provides that authorised officer (police officers) may assist the Competent Authority

Clause 13 makes provision for the electronic production, storage and transmission of information.

Clause 14 provides that persons who a required to give information under this Act, have a right to legal representation.

Clause 15 gives the Competent Authority the power to authenticate official documents

Clause 16 deals with the service of notices and documents.

Clause 17 makes provision for judicial review of decisions made by the Competent Authority under this Act.

Clause 18 gives the Competent Authority immunity from damages, for things done under this Act, in good faith

Clause 19 protects persons who disclose confidential information pursuant to this Act.

Clause 20 restricts the application of the Confidentiality Relationships Act

Clause 21 requires person to treat a request for information as confidential

Clause 22 requires that the Competent Authority treat information received under automatic exchange as confidential

Clause 23 restricts the use of confidential information received by the Competent Authority.

Clause 24 makes provision for legal professional privilege

Clause 25 creates offences for non compliance with provisions under the Act.

Clause 26 authorises the Competent Authority to issue Directions under this Act of an agreement.

Clause 27 makes provisions for the making of Regulations

Clause 28 provides the citation

Clause 29 repeals the International Co-operation (Tax Information Exchange Agreement) Act R.S.A. c I23

Clause 30 provides for transitional provisions