

2011 No. 1686

TAXES

The International Tax Enforcement (Dominica) Order 2011

Made - - - - *13th July 2011*

At the Court at Buckingham Palace, the 13th day of July 2011

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(a) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) to (3) 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 (Dominica) Order 2011.

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 Dominica 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.

Judith Simpson
Clerk of the Privy Council

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Dominica ("the Contracting Parties") recognise the need for cooperation and the exchange of information in criminal and civil tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and tax matters;

Whereas the Contracting Parties will not, pursuant to Article 5 of the Agreement, engage in fishing expeditions or request information that is unlikely to be relevant to the tax affairs of a given taxpayer;

Now, therefore, the Contracting Parties desiring to conclude an Agreement, which contains obligations on the part of the Contracting Parties only, for the exchange of information with respect to taxes and tax matters, have agreed as follows:

ARTICLE 1

Scope of Agreement

The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and/or enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement. Such information shall include that which 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 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 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

1. To enable the provisions of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting Party.
2. 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. The existing taxes which are the subject of this Agreement are taxes of every kind and

description imposed by or on behalf of the Contracting Parties.

2. This Agreement shall also apply to any identical taxes imposed by either Contracting Party after the date of signature of this 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. 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. In this Agreement, unless otherwise defined:
 - (a) the term "Commonwealth of Dominica" means the island of Dominica, including the territorial waters thereof and any other area in the sea and in the air within which the Commonwealth of Dominica, in accordance with international law, exercises its sovereign rights;
 - (b) 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;
 - (c) the term "collective investment fund or scheme" means any pooled investment vehicle irrespective of legal form;
 - (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 the Commonwealth of Dominica, the Minister for Finance or the Minister's authorised representative;
 - (ii) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (f) the term "Contracting Party" means the Commonwealth of Dominica or the United Kingdom of Great Britain and Northern Ireland 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 laws;
 - (h) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
 - (i) the term "information" means any fact, statement, document or record in any form whatever;
 - (j) the term "information gathering measures" means laws, regulations and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - (k) the term "national" means:

- (i) in the case of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust, estate, association or any other entity deriving its status as such from the laws in force in the Commonwealth of Dominica;
 - (ii) in the case of 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;
- (l) the term "person" includes an individual, a company, and any other body of persons;
 - (m) 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;
 - (n) the term "public collective investment fund or scheme" means any collective 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 "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 restricted to a limited group of investors;
 - (p) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - (q) the term "Requested Party" means the party to this Agreement which is requested to provide or has provided information in response to a request;
 - (r) the term "Requesting Party" means the party to this Agreement submitting a request for or having received information from the Requested Party;
 - (s) the term "tax" means any tax covered by this Agreement.

3. Any term not defined in this Agreement 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 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 conduct being investigated would constitute a crime under the laws of the Requested Party if it 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, the Requested Party shall use all relevant information gathering measures 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 Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has 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 legal and beneficial 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, protectors and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and in the case of entities that are neither trusts nor foundations, equivalent information as previously stated for trusts and foundations.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting 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;
- (b) information which exceeds the legally required time period for retaining that information in the jurisdiction of the Requested Party and where that information is in fact no longer kept;
- (c) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party wishes to receive the information;
- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Party;
- (e) 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;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party and 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;

- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response the competent authority of the Requested Party shall confirm the 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 any deficiencies in the request within 60 days of receipt of the request.

8. If the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal.

ARTICLE 6

Tax Examinations or Investigations Abroad

1. The Requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the written consent of the 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 meeting with the persons concerned.

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting 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 of this Article 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 a request for information where:

- (a) the request is not made in conformity with this Agreement; or
- (b) 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 difficulties; or
- (c) the disclosure of the information requested would be contrary to public policy.

2. The provisions of this Agreement shall not impose upon a Contracting Party, any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, the information described in Paragraph 4 of Article 5 shall not be treated as such a secret or trade process, merely because it meets the criteria in that paragraph.
3. (a) This Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister or other admitted legal representatives where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice; or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings;(b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister or admitted legal representative from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The Requested Party shall not be required to obtain or provide information that the Requesting 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.
6. 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 resident or national of the Requested Party as compared with a resident or national of the Requesting 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 and tax matters covered by this Agreement, or to tax oversight authorities in the jurisdiction of the Contracting Party only to the extent necessary for those authorities to perform their responsibilities. 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 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 use their best efforts to resolve the matter by mutual agreement.
2. In addition to the efforts referred to in Paragraph 1 of this Article, the competent authorities of the Contracting Parties may mutually agree 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 the purposes of this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 12

Entry into Force

Each of the Contracting Parties shall notify to the other in writing through the diplomatic channel the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of the notifications. Upon entry into force, it shall have effect:

- (a) with respect to criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on the date of entry into force of this Agreement, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 13

Termination

1. Either Contracting Party may terminate this Agreement by serving a notice of termination in writing through the diplomatic channel.
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 notice of termination by the other Contracting Party.
3. Notwithstanding any termination of this Agreement, 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 thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London on this 31st day of March 2010 in the English language.

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

Stephen Timms

**For the Government of the
Commonwealth of Dominica**

Agnes Adonis

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 of Great Britain and Northern Ireland and the Government of the Commonwealth of Dominica. 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 or recovery 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 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, on the date of entry into force; and
- (b) in respect of all other requests, for 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*.

In line with government commitments, a Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a tax information exchange agreement.

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STATUTORY INSTRUMENTS

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