

**TAX INFORMATION EXCHANGE
AGREEMENTS ACT**

CHAPTER 76:51

**Act
30 of 1989**

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CHAPTER 76:51

**TAX INFORMATION EXCHANGE
AGREEMENTS ACT**

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CHAPTER 76:51

**TAX INFORMATION EXCHANGE
AGREEMENTS ACT**

30 of 1989. **An Act to make provision for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for the purposes of taxation, and for related purposes.**

Commencement. [8TH AUGUST 1989]

Short title. **1.** This Act may be cited as the Tax Information Exchange Agreements Act.

Interpretation. **2.** In this Act—
“competent authority”, in relation to a tax information exchange agreement—

(a) means, in the case of Trinidad and Tobago, the Board as the Minister’s authorised representative;

(b) in the case of another State, has the meaning ascribed in the agreement;

“contracting States” in relation to a tax information exchange agreement, means Trinidad and Tobago and the other State on behalf of which the agreement is entered into;

“declared agreement” means a tax information exchange agreement that has, under section 4, been declared by the President to be a declared agreement for the purposes of this Act;

“Minister” means the Minister to whom the responsibility for Finance is assigned;

“tax information exchange agreement” has the meaning given by section 3;

Ch. 75:01. “the Board” means the Board of Inland Revenue established by section 3 of the Income Tax Act.

3. (1) For the purposes of this Act, a tax information exchange agreement is an agreement whereby the Government of Trinidad and Tobago and the Government of another State undertake that those States will, through their competent authorities, provide each other, upon request, with any financial and other information and supporting documentation accessible to the competent authority of the State to which the request is made that is required by the competent authority of the requesting State for the purposes of administering or enforcing a law relating to taxation of a kind specified in the agreement.

Tax information exchange agreements.

(2) An agreement is not precluded from being a tax information exchange agreement for the purposes of this Act by reason that it—

- (a) includes provision for matters necessary for or incidental to, the matters referred to in subsection (1);
- (b) provides for a contracting State to obtain and transmit to the other contracting State any information that it considers may assist that other State to administer or enforce a law referred to in subsection (1); or
- (c) provides for the implementation of programmes or measures to facilitate or improve the administration and enforcement of the laws referred to in subsection (1).

4. The President may, by Order, declare a tax information exchange agreement specified in the Order to be a declared agreement for the purposes of this Act.

Declaration of agreement.

5. (1) The competent authority has the function of ensuring that effect is given to every declared agreement.

Implementation of agreements.

(2) The Minister may give general directions to the Board as to the performance by it of its functions under this Act, and the Board shall comply with any direction so given.

Powers of Board.

6. (1) The Board has, for the purposes of giving effect to a declared agreement, all the powers that it would have if it were acting generally for the purposes of, or for any particular purpose specified in, any Act that confers powers on the Board and any such power is exercisable notwithstanding that the circumstances, if any, necessary under that Act for the exercise of the power may not have arisen and, subject to this subsection, the provisions of that Act shall apply to, and in relation to, the exercise of any such power for the purposes of giving effect to a declared agreement as if the power were exercised for the purposes of that Act.

(2) The Board may, in accordance with a declared agreement—

- (a) provide any information obtained by it under this or any other Act; and
- (b) request and receive any information required by it for the purposes of any Act.

Secrecy.
Ch. 75:01.

7. (1) Nothing in section 4 of the Income Tax Act, or any other law to a like effect, prevents the disclosure of information where that disclosure is in accordance with, and for the purpose of giving effect to, a declared agreement.

(2) Where information has been obtained or received by the Board under this Act or a declared agreement, a person who uses or discloses the information other than for the purposes for which it was obtained or received is liable to the same penalty as that to which he would be liable if he had committed an offence under section 4(2) of the Income Tax Act.

SUBSIDIARY LEGISLATION

TAX INFORMATION (DECLARED AGREEMENT) ORDER 156/1990.

made under section 4

1. This Order may be cited as the Tax Information (Declared Agreement) Order. Citation.

2. The Tax Information Exchange Agreement entered into on 11th January 1989 between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America which Agreement came into force on 9th February, 1990 and is set out in the Schedule, is hereby declared to be a declared agreement for the purposes of the Tax Information Exchange Agreements Act. Declared Agreement.

3. This Order is deemed to have come into effect on the 9th day of February 1990. Commencement.

SCHEDULE

**AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF TRINIDAD AND TOBAGO AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
FOR THE EXCHANGE OF INFORMATION WITH
RESPECT TO TAXES**

The Government of the Republic of Trinidad and Tobago and the Government of the United States of America, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the "Agreement"), have agreed as follows:

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to

ARTICLE 1—*Continued*

develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorised pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

2. Information shall be exchanged to fulfil the purpose of this Agreement 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 State.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:

(a) In the case of the United States of America—

- (i) Federal income taxes
- (ii) Federal taxes on self-employment income
- (iii) Federal taxes on transfers to avoid income tax
- (iv) Federal estate and gift taxes
- (v) Federal excise taxes; and

(b) In the case of the Republic of Trinidad and Tobago—

- (i) The Income Tax
- (ii) The Corporation Tax
- (iii) The Petroleum Profits Tax
- (iv) The Unemployment Levy.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of significant changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State's statute of limitations.

4. This Agreement shall not apply to taxes imposed by States, municipalities or other political subdivisions, or possessions of a Contracting State.

ARTICLE 3

DEFINITIONS

1. In this Agreement, unless otherwise defined—

- (a) The term “competent authority” means:
 - (i) in the case of the United States of America, the Secretary of the Treasury or his delegate; and
 - (ii) in the case of the Republic of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorised representative.
- (b) The term “national” means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (c) The term “person” comprises an individual, a corporation and any other body of individuals or persons.
- (d) The term “tax” means any tax to which the Agreement applies.
- (e) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the States thereof, the District of Columbia and any United States possession or territory.
- (f) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Republic of Trinidad and Tobago” means the islands of Trinidad and Tobago.

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement.

2. The competent authority of the requested State shall endeavour to provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, the State shall take all relevant measures to provide the applicant State with the information requested. The competent authorities of the Contracting States have authority to obtain and shall provide information from financial institutions. Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State.

3. If information is requested by a Contracting State pursuant to paragraph 2 of this Article, the requested State shall endeavour to obtain the information requested in the same manner, and provide it in the same form, as if the tax of the applicant State were the tax of the requested State and were being imposed by the requested State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under the Article in the form of depositions of witnesses, authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings) and other tangible property to the same extent such depositions, documents and property can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation—

- (a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;
- (b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;

- (d) to supply information the disclosure of which would be contrary to public policy (order public);
- (e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to the taxes imposed by the United States or by the Republic of Trinidad and Tobago on branch profits (i.e., dividend equivalent and/or excess interest amounts) or on the premium income of non-resident insurers or foreign insurance companies.

5. Except as provided in paragraph 4 of this Article, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 4 of this Article, it has no obligation to transmit.

6. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the individuals contacted.

7. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public Court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

ARTICLE 5

MUTUAL AGREEMENT PROCEDURE AND COSTS

1. The competent authorities of the Contracting States shall agree to implement a programme to carry out the purposes of this Agreement. This programme may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques, identification of new areas of non-compliance and joint studies of non-compliance areas.

2. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement and may communicate directly for this purpose. In particular, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of this Article.

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

4. Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

ARTICLE 6

OTHER APPLICATIONS OF AGREEMENT

This Agreement is consistent with the standards for an exchange of information agreement described in section 274(h)(6)(C) of the United States Internal Revenue Code of 1986, as amended (the “Code”) (relating to deductions for attendance at foreign conventions), and referred to by cross-reference in section 927(e)(3)(A) of the Code (relating to foreign sales corporations) and section 936(d)(4) of the Code (relating to Puerto Rico and the possession tax credit).

ARTICLE 7

IMPLEMENTATION

A Contracting State shall enact such legislation as may be necessary to effectuate this Agreement.

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ARTICLE 8

ENTRY INTO FORCE

This Agreement shall enter into force upon an exchange of notes by the duly authorised representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

ARTICLE 9

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.