

VIRGIN ISLANDS
MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ORDER, 2018

ARRANGEMENT OF SECTIONS

Section

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

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2018 NO. 2

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

Mutual Legal Assistance (Tax Matters) Order, 2018

[Gazetted 18th January, 2018]

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, 2018.

Application of Part 1 of the Act. No. 18 of 2003 **2.** Part 1 of the Mutual Legal Assistance (Tax Matters) Act, 2003 applies to the Agreements reproduced in the Schedule.

SCHEDULE

[Section 2]

1.

COMPETENT AUTHORITY AGREEMENT ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

Whereas, the Governments of the United Kingdom of Great Britain and Northern Ireland and the British Virgin Islands intend to improve international tax compliance by further building on their relationship with respect to mutual assistance in tax matters;

Whereas, the Common Reporting Standard was developed by the OECD, with G20 countries to tackle tax avoidance and evasion and improve tax compliance;

Whereas, the laws of the British Virgin Islands require or are expected to require financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Section 2 of this Agreement and the reporting and due diligence procedures set out in the Common Reporting Standard;

Whereas, Article 5A of the 2008 Agreement between the United Kingdom and the British Virgin Islands for the exchange of information relating to tax matters (the “TIEA”), authorizes the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of the United Kingdom and the British Virgin Islands (the “Competent Authorities”) to agree the scope and modalities of such automatic exchanges;

Whereas, it is expected that the laws of the jurisdictions would be amended from time to time to reflect updates to the Common Reporting Standard and once such changes are enacted by a jurisdiction the definition of Common Reporting Standard would be deemed to refer to the updated version in respect of that jurisdiction;

Whereas, the United Kingdom of Great Britain and Northern Ireland has, or is expected to have, in place by the time the first exchange takes place appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the TIEA;

Whereas, the jurisdictions have the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement);

Whereas, the Competent Authorities of the jurisdictions intend to conclude an agreement to improve international tax compliance based on automatic exchange pursuant to the TIEA, without prejudice to national legislative procedures (if any), and subject to the confidentiality and other protections provided for in the TIEA, including the provisions limiting the use of the information exchanged thereunder, as well as the safeguards specified by the supplying Competent Authority to ensure the necessary level of protection of personal data under its domestic law;

Whereas, the processing of information under this Agreement is necessary and proportionate for the purpose of enabling tax administrations to correctly and unequivocally identify the taxpayers concerned, to administer and enforce their tax laws in cross-border situations, to assess the likelihood of tax evasion being perpetrated, and to avoid unnecessary further investigations;

Now, therefore, the Competent Authorities have agreed as follows:

SECTION 1

Definitions

1. For the purposes of this agreement (“Agreement”), the following terms have the following meanings:
 - a. the term “**British Virgin Islands**” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution order 2007;
 - b. the term “**United Kingdom**” means Great Britain and Northern Ireland but, when used in a geographical sense, means the territory and territorial sea of Great Britain and Northern Ireland and the areas beyond the territorial sea over which Great Britain and Northern Ireland exercise sovereign rights or jurisdiction in accordance with their domestic law and international law;
 - c. the term “**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; and
 - ii. in the case of the United Kingdom, the Commissioners of Her Majesty’s Revenue and Customs or their authorised representative;
 - d. the term “**British Virgin Islands Financial Institution**” means (i) any Financial Institution that is resident in the British Virgin Islands, but excludes any branch of that Financial Institution that is located outside the British Virgin Islands, and (ii) any branch of a Financial Institution that is not resident in the British Virgin Islands, if that branch is located in the British Virgin Islands;

- e. the term “**Reporting Financial Institution**” means any British Virgin Islands Financial Institution that is not a Non-Reporting Financial Institution;
 - f. the term “**Reportable Account**” means a United Kingdom Reportable Account, as the context requires, provided it has been identified as such pursuant to due diligence procedures, consistent with the Common Reporting Standard, in place in the British Virgin Islands;
 - g. the term “**United Kingdom Reportable Account**” means a Financial Account that is maintained by a British Virgin Islands Reporting Financial Institution and held by one or more United Kingdom Persons that are Reportable Persons or by a Passive Non-Financial Entity with one or more Controlling Persons that is a United Kingdom Reportable Person;
 - h. the term “**United Kingdom Person**” means an individual or Entity that is identified by a British Virgin Islands Reporting Financial Institution as resident in the United Kingdom pursuant to due diligence procedures consistent with the Common Reporting Standard, or an estate of a decedent that was a resident of the United Kingdom;
 - i. the term “**TIN**” means a United Kingdom TIN;
 - j. the term “**United Kingdom TIN**” means a National Insurance Number (NINO) or a Unique Taxpayer Reference (UTR). Both identifiers are unique and personal to the individual or Entity concerned;
 - k. the term “**Common Reporting Standard**” means the standard for automatic exchange of financial account information in tax matters (which includes the Commentaries), developed by the OECD, with G20 countries.
2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time under the law of the jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Common Reporting Standard. Any term not otherwise defined in this Agreement or in the Common Reporting Standard will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction applying this Agreement, any meaning under the applicable tax laws of that jurisdiction prevailing over a meaning given to the term under other laws of that jurisdiction.

SECTION 2

Exchange of Information with Respect to Reportable Accounts

1. Pursuant to the provisions of Article 5A of the TIEA and subject to the applicable reporting and due diligence rules consistent with the Common Reporting Standard, the

British Virgin Islands Competent Authority will annually exchange with the United Kingdom Competent Authority on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.

2. The information to be exchanged is with respect to each United Kingdom Reportable Account:
 - a. the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
 - b. the account number (or functional equivalent in the absence of an account number);
 - c. the name and identifying number (if any) of the Reporting Financial Institution;
 - d. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
 - e. in the case of any Custodial Account:
 - i. the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - ii. the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
 - f. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
 - g. in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the

Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

SECTION 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Section 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the British Virgin Islands.
2. For the purposes of the exchange of information in Section 2, the information exchanged will identify the currency in which each relevant amount is dominated.
3. With respect to paragraph 2 of Section 2, and subject to the dates specified in the notification pursuant to paragraph 1a)(i) of Section 7, information is to be exchanged commencing from the year 2017 within nine months after the end of the calendar year to which the information relates.
4. The British Virgin Islands Competent Authority will automatically exchange the information described in Section 2 in the common reporting standard schema in Extensible Markup Language.
5. The Competent Authorities work towards and agree on one or more methods for data transmission, including encryption standards.

SECTION 4

Collaboration on Compliance and Enforcement

The United Kingdom Competent Authority will notify the British Virgin Islands Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Common Reporting Standard. The British Virgin Islands Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

SECTION 5

Confidentiality and Data Safeguards

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the TIEA, including the provisions limiting the use of the information

exchange and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the British Virgin Islands Competent Authority as required under its domestic law of the British Virgin Islands Competent Authority, as specified in the notification pursuant to paragraph 1(b) of Section 7.

2. The United Kingdom Competent Authority will notify the British Virgin Islands Competent Authority immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed.

SECTION 6

Consultations and Amendments

1. If any difficulties in the implementation or interpretation of this Agreement arise, either Competent Authority may request consultations to develop appropriate measures to ensure that this Agreement is fulfilled.
2. This Agreement may be amended by written agreement of the Competent Authorities. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the later of the signatures of such written agreement or the date of the later of the notifications exchanged for purposes of such written agreement.

SECTION 7

Term of Agreement

1. This Agreement will come into effect on the date of the latest of the following:
 - a. Notifications provided by each Competent Authority to the other Competent Authority confirming:
 - i. that its jurisdiction has the necessary laws in place to implement the Common Reporting Standard and specifying the relevant effective date with respect to Preexisting Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures; and
 - ii. the method(s) for data transmission including encryption.
 - b. Notification provided by the British Virgin Islands Competent Authority to the United Kingdom Competent Authority confirming the safeguards, if any, for protection of personal data required under the domestic law of the supplying Competent Authority and to be complied with by the receiving Competent Authority.

- c. Notifications provided by the United Kingdom Competent Authority to the British Virgin Islands Competent Authority confirming:
 - i. that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met and attaching the completed confidentiality and data safeguard questionnaire; and
 - ii. that the jurisdiction is in a position to comply with the data protection safeguards specified by the other Competent Authority in its notification pursuant to paragraph 1(b) of Section 7.

Each Competent Authority must notify the other Competent Authority promptly, of any subsequent change to be made to the above-mentioned notifications.

- 2. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to the other Competent Authority that it has determined that there is or has been significant non-compliance by the other Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the TIEA, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.
- 3. A Competent Authority may terminate this Agreement by giving notice of termination in writing to the other Competent Authority. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of the termination, all information previously received under this Agreement will remain confidential and subject to the terms of the TIEA.

Signed in duplicate, in Panama City on 12 June, 2017.

Competent Authority for the
British Virgin Islands:

Competent Authority for the
United Kingdom:

Name: **La Toya James**
Director
International Tax Authority

Name: **Fiona Hay**
Head of JITSIC and
Exchange of Information Policy

Made by the Minister this 10th day of January, 2018.

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