

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ORDER, 2015

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2015 NO. 44

**MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003
(No. 18 of 2003)**

Mutual Legal Assistance (Tax Matters) Order, 2015

[Gazetted 4th June, 2015]

The Minister, on the advice of the Authority and in exercise of the power conferred by section 3A 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, 2015.

Effect of
section 3A of
the principal
Act.
No. 18 of 2003.

2. (1) Section 3A of the Mutual Legal Assistance Tax Matters Act, 2003 (*hereinafter referred to as "the principal Act"*), shall have effect for and in connection with the implementation of the obligations arising under the Agreement between the Government of the United States of America and the Government of the British Virgin Islands to Improve Tax Compliance and to implement the Foreign Accounts Tax Compliance Act.

(2) In this Order,

- (a) the reference to the word "Agreement" means the Agreement mentioned in subsection (1), which was signed on the 30th day of June, 2014 and came into force on the 30th day of September, 2014, and
- (b) a word or expression which is not defined in the Agreement has the same meaning in that Agreement except to the extent that a Financial Institution may use as an alternative a definition in –
 - (i) the United States Treasury Regulations; or
 - (ii) the Common Reporting Standard for Automatic Exchange of Financial Account Information published by the Organisation for Economic Co-operation and Development,

in so far as the use of the definition would not frustrate the purposes of the Agreement.

Identification
of financial
accounts.

(3) In determining whether or not the use of a definition referred to in subsection (2) would frustrate the purposes of the Agreement, a Financial Institution shall take account of the principal Act and any guidance issued or approved by the Competent Authority.

3. (1) A Financial Institution must establish and maintain arrangements that are designed to identify US reportable accounts, as defined at Article 1, 1 (y) of the Agreement and accounts held by Nonparticipating Financial Institutions, as defined at Article 1,1 (p) of the Agreement;

(2) The due diligence requirements for the purposes of this Order, are as set out in Annex 1 of the Agreement and must be applied in relation to each category of reportable financial accounts;

(3) A Financial Institution is taken to comply with the obligation to establish and maintain arrangements within paragraph (1) only if

(a) the arrangements meet the applicable due diligence requirements as set out in Annex I of the Agreement, and

(b) the arrangement secure that the evidence used or record of the steps taken in accordance with this Order is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(4) As an alternative to the procedures set out in Annex 1, this Order provides for a reporting Financial Institution to rely on the procedures described in the relevant US Treasury Regulations to establish whether an account is a US Reportable Account or an account held by a Nonparticipating Financial Institution. Such, elections can be made separately for each section of Annex 1 either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

(5) An election made under paragraph (4)

(a) must be made to the Competent Authority;

(b) shall be made in a form determined by the Competent Authority; and

(c) has effect in relation to the calendar year in respect of which the election is made and all later calendar years, unless the election is withdrawn.

(6) A reporting Financial Institution may rely on due diligence procedures performed by third parties, for the purposes of this Order, to the extent provided in the relevant US Treasury Regulations, regardless of whether an election is made under Annex 1 of the Agreement.

4. (1) A reporting Financial Institution must:
- (a) in respect of 2014 and every following calendar year, prepare the required information as set out in the Agreement at Article 2 paragraph 2 in relation to every reportable account that is maintained by the financial institution at any time during the calendar year in question; and
 - (b) in respect of each of the calendar years 2015 and 2016 prepare the required information as set out in the Agreement at Article 4 paragraph 1 (b) in relation to Nonparticipating Financial Institutions.

(2) A reporting Financial Institution must comply with the registration requirements on the Internal Revenue Service (IRS) FATCA registration website and obtain a Global Intermediary Identification Number (GIIN) from the IRS and the GIIN must be included in the required information prepared;

(3) A reporting Financial Institution shall comply with the registration requirements of the Competent Authority in order to submit the required information to the Competent Authority as outlined in subsection (4);

(4) The information required under subsection (1) must be sent to the Competent Authority,

- (a) in relation to the reporting year 2014, the information must be submitted on or before 30th June, 2015; and
- (b) in relation to all subsequent years, the information must be submitted on or before 31st May.

(5) The modification to the required information to be reported for the years 2014 to 2016 applies, as set out in Article 3 paragraph 3 of the Agreement.

(6) A reporting Financial Institution shall implement arrangements to obtain the taxpayer identifying number (TIN) of every United States specified person who is the account holder of a reportable financial account and provide the TIN with the required information to the Competent Authority

- (a) in the case of pre-existing accounts, from 1st January, 2017 and
- (b) in the case of new accounts opened on or after 1st July, 2014, from that date.

(7) A Financial Institution that has reporting obligations under the Agreement shall notify the Competent Authority of this obligation, by registering with the Competent Authority in a form determined by the Authority.

(8) A Financial Institution on submission of the required information on an annual basis shall comply with the requirements determined by the Authority.

(9) A Financial Institution submitting information to the Competent Authority

- (a) in the year 2015, shall register with the Authority no later than 1st June, 2015; and
- (b) in relation to subsequent years, shall register with the Authority no later than 1st April in the first calendar year in which it is required to comply with reporting obligations to the Competent Authority under this Order no later than 31st May of that same year,

and registration is only required once and remains valid unless revoked by way of notification from the Financial Institution to the Competent Authority.

(10) A Financial Institution shall notify the Competent Authority immediately of any changes to the information provided under subsections (6) and (7) , including any changes to the details of its primary point of contact.

Appointment
of Third
Parties.

5. (1) A reporting Financial Institution may appoint a person as its agent to carry out the duties and obligations imposed on it by this Order or the Agreement.

(2) Where a person is appointed under subsection (1)

- (a) the Financial Institution shall, at all times, have access to and be able to produce, where so requested by the Competent Authority, the records and documentary evidence used to identify and report on reportable accounts; and

Inspection
and
Compliance.

- (b) the Financial Institution is responsible for any failure of that person to carry out its obligations notwithstanding that the actions were the actions of that person or that the failure to act was the failure by that person to act.

6. (1) For the purposes of determining whether any information submitted by a reporting Financial Institution in furtherance of the requirements of this Order, was correct and complete, the Competent Authority may require a Reporting Financial Institution

- (a) to provide to the Competent Authority, within a time specified by the Competent Authority, the information, including copies of any relevant books, documents or other records, or any electronically stored information, that the Competent Authority may reasonably require; or
- (b) to make available to the Competent Authority for inspection, at the time specified by the Competent Authority, all copies of books, documents or other records, or any electronically stored information, in the Reporting Financial Institution's possession or under its control; or
- (c) to provide or make available any other such information as the Competent Authority may determine relevant or necessary to determine if the information is correct and complete.

(2) Where any information which is required to be provided to, or inspected by, the Competent Authority is located outside of the British Virgin Islands in any manner whatsoever, the reporting Financial Institution shall take all necessary steps to bring the information to the British Virgin Islands within the time specified by the Competent Authority in writing to enable the reporting Financial Institution to comply with the requirements of the Competent Authority under this Order.

(3) A reporting Financial Institution shall retain for a period of six years all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the Competent Authority for the purposes of the Agreement and this Order.

General
penalty.

7. Where an obligation is created under this Order the general penalty section 21 of the principal Act applies to this Order and the Agreement.

Issuance of
Guidance Notes.

8. The Competent Authority shall issue guidance from time to time and in a form considered appropriate by the Competent Authority for the purposes of aiding compliance with this Order.

Made by the Minister this 26th day of May, 2015.

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