

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 21 of 2012

Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (Guernsey) Order.

In exercise of the powers conferred by section 3 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, No. 7 of 2009, the Minister makes the following Order:

[Published 21st June 2012, Official Gazette No. 30 of 2012]

1. Citation.

This Order may be cited as the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (Guernsey) Order, 2012.

2. Interpretation.

In this Order, “Act” means the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of 2009.

3. Amendment of Second Schedule.

The Second Schedule of the Act is amended by inserting the following expression immediately after the expression “20. CARICOM Member States (except Saint Christopher and Nevis)”

“21. Guernsey”.

4. Amendment of Third Schedule.

The Third Schedule of the Act is amended by inserting the following new Part XX immediately after the end of Part IXX

“PART XX

AGREEMENT BETWEEN THE STATES OF GUERNSEY AND SAINT CHRISTOPHER (SAINT KITTS) AND NEVIS FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with Saint Kitts and Nevis;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

Article 1
SCOPE OF THE AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Party concerning taxes covered by this Agreement;
- b) Include information that 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; and
- c) Be treated as confidential as set forth in this Agreement.

Article 2
JURISDICTION

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

Article 3
TAXES COVERED

1. This Agreement shall apply to the following taxes:
 - a) In respect of Guernsey:
 - (i) Income tax; and
 - (ii) Dwellings Profits Tax;
 - b) In respect of Saint Kitts and Nevis
 - (i) All taxes imposed and administered by the Government of St. Kitts and Nevis.
2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Parties so agree. The competent authorities of the Parties shall notify each other of any substantial changes to their taxation and related information gathering measures, which may affect their obligations under the Agreement.

Article 4
DEFINITIONS

1. For the purposes of this Agreement, unless otherwise defined:
 - a) "Guernsey" means the States of Guernsey or, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - b) "Saint Kitts and Nevis" means the twin island Federation of Saint Kitts (Saint Christopher) and Nevis and when used in a geographical sense, means the territories of Saint Kitts and Nevis;

- c) “Collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment 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;
 - d) “Competent authority” means:
 - (i) In respect of Guernsey, the Director of Income Tax or his delegate;
 - (ii) In respect of Saint Kitts and Nevis, the Financial Secretary or the Financial Secretary’s authorized representative;
 - e) “Company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) “Criminal laws” means all criminal laws designated as such under the respective law of the Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
 - g) “Criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
 - h) “Information” means any fact, statement, document or record in any form whatever;
 - i) “Information-gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
 - j) “Parties” means Guernsey or St Kitts and Nevis, as the context requires;
 - k) “Person” includes an individual, a company and any other body of persons;
 - l) “Principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - m) “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 or explicitly restricted to a limited group of investors;
 - n) “Recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
 - o) “Requested Party” means the Party requested to provide or which has provided information or assistance in response to a request;
 - p) “Requesting Party” means the Party submitting a request for or having received information or assistance from the requested Party;
 - q) “Tax” means any tax to which the Agreement applies;
 - r) “Tax matters” means all tax matters including criminal tax matters.
2. As regards the application of this Agreement at any time by a Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable

tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.
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, that Party shall use at its own discretion all applicable information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, 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 laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authority, in accordance with the terms of this Agreement, has the authority to obtain and provide upon request:
 - a) Information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and
 - b) Information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, provided that this Agreement does not create an obligation on the Parties to obtain or provide 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.
5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:
 - a) The identity of the person under examination or investigation;
 - b) The period for which the information is requested;
 - c) The nature of the information sought and the form in which the requesting Party would prefer to receive it;
 - d) The tax purpose for which the information is sought;

- e) The reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
 - f) Grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
 - g) To the extent known, the name and address of any person believed to be in possession of the requested information;
 - h) A statement that the request is in conformity with the laws and administrative practices of the requesting Party, 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 and that it is in conformity with this Agreement;
 - i) 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.
6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

Article 6 TAX EXAMINATIONS ABROAD

1. By reasonable notice given in advance, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other 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 intended meeting with the individuals concerned.
2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party, to the extent permitted under its laws.
3. If the request referred to in paragraph 2 is acceded to, 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 official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

Article 7**POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
 - a) Where the request is not made in conformity with this Agreement ;
 - b) Where 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 difficulty; or
 - c) Where the disclosure of the information requested would be contrary to the public policy of the requested Party.
2. This Agreement shall not impose upon a requested party any obligation:
 - a) To provide items subject to legal privilege, or information which would disclose trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or
 - b) To carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Party under paragraph 4 of Article 5.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.
5. 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 citizen or a national of the requested Party as compared with a citizen or a national of the requesting Party in the same circumstances.

Article 8**CONFIDENTIALITY AND DATA PROTECTION**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.
4. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9
COSTS

Incidence of costs incurred in providing assistance shall be agreed by the Parties.

Article 10
IMPLEMENTATION LEGISLATION

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 11
LANGUAGE

Requests for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

Article 12
MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

Article 13
ENTRY INTO FORCE

1. This Agreement shall enter into force 30 days after receipt of the later of the notifications, in writing, conveying the completion of the internal procedures of each Party required for that purpose.
2. Upon the date of entry into force, this Agreement shall have effect:
 - a) For criminal tax matters on that date; and
 - b) For all other matters covered in Article 1 on that date, 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 14
DURATION AND TERMINATION

1. This Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the Agreement by giving written notice of termination to the other Party.
3. The Agreement shall terminate on the first day of the month following the expiration of a period of six months after the receipt of such notification.
4. Notwithstanding the termination of the Agreement, the Parties shall remain bound to the provisions of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

Done at St. Peter Port, Guernsey, on **7th February 2012**, and at Basseterre, St. Kitts, on **18th January 2012**, in duplicate in the English language.

For Saint Kitts and Nevis

Dr. Denzil L. Douglas
Minister of Finance

For the States of Guernsey

Mr. Lyndon Trott
Chief Minister

**AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF
GUERNSEY AND ST KITTS AND NEVIS**

On 18 January 2012 and 7 February 2012, an Agreement for the Exchange of Information Relating to Tax Matters (the "Agreement") was entered into between the States of Guernsey and St Christopher (St Kitts) and Nevis. In order to ensure the appropriate implementation of the Agreement, the competent authorities of Guernsey and St Kitts and Nevis (the "Competent Authorities") agree to the following.

- 1 For the purposes of Article 9 of the Agreement, indirect costs incurred in providing assistance under the Agreement shall be borne by the requested Party, and direct costs incurred in providing assistance shall be borne by the requesting Party.
 - a) examples of "direct costs" include, but are not limited to, the following:
 - (i) reasonable costs of reproducing and transporting documents or records to the Competent Authority of the requesting Party;
 - (ii) reasonable fees imposed by a financial institution or other third party record keeper for copying records and research related to a specific request for information;
 - (iii) reasonable costs for stenographic reports of interviews, depositions or testimony;
 - (iv) reasonable fees and expenses of a person who voluntarily appears in Guernsey or St Kitts and Nevis for an interview, deposition or testimony relating to a particular information request; and
 - (v) reasonable legal fees for non-government counsel appointed or retained, with approval of the Competent Authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;
 - b) "direct costs" do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

- 2 If the “direct costs” pertaining to a specific request are expected to exceed £500 sterling, the Competent Authority of the requested Party shall contact the Competent Authority of the requesting Party to determine whether the requesting Party wants to pursue the request and bear the costs.
- 3 The Competent Authorities of the Parties shall consult not later than twelve months after the date the Agreement enters into force, and upon request of either Competent Authority thereafter, with respect to costs incurred or potentially to be incurred under the Agreement and with a view to minimising such costs.

For St. Kitts and Nevis
By: Janet Harris

Financial Secretary

Date: 25th January 2012

For Guernsey
By: Robert R Gray

Director of Income Tax

Date: 7th February 2012

Made this 18th day of June 2012

DENZIL DOUGLAS
Minister responsible for Finance