

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) (No. 2) ORDER, 2015

ARRANGEMENT OF SECTIONS

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2015 NO. 98

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

Mutual Legal Assistance (Tax Matters) (No. 2) Order, 2015

[Gazetted 11th December, 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) (No. 2) 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 Kingdom of Great Britain and Northern Ireland and the Government of the British Virgin Islands to Improve International Tax Compliance.

(2) In this Order,

- (a) the reference to the word “Agreement” means the Agreement mentioned in subsection (1), which was signed on the 28th day of November, 2013 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 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:

(a) identify United Kingdom reportable accounts, as defined at Article 1, 1 (u) of the Agreement, and

(b) establish the jurisdictions of residence of an account holder for tax purposes.

(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 arrangements ensure 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, in so far as they have been accepted by both Parties, to establish whether an account is a United Kingdom Reportable Account. 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.

General reporting obligations of Financial Institutions.

4. (1) A reporting Financial Institution must in respect of 2014 and every following calendar year, prepare the required information as set out in the Agreement at Article 2 paragraph 2, as it relates to every reportable account that is maintained by the financial institution at any time during the calendar year in question.

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

- (a) in relation to the reporting years 2014 and 2015, on or before 31st May, 2016;
- (b) in relation to the reporting year 2016, on or before 31st May, 2017; and
- (c) in relation to all subsequent years, on or before 31st May of the year following the calendar year to which the information relates.

(3) 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.

(4) A reporting Financial Institution must provide, where available, its Global Intermediary Identification Number (GIIN) that it obtained when registering with the U.S. Internal Revenue Service for FATCA purposes. Where the reporting Financial Institution does not have a GIIN, the reporting Financial Institution shall provide a local reference which shall be in a form determined by the Authority.

(5) In the case of pre-existing accounts there is no requirement to include in the information to be submitted for calendar years before 2017, a United Kingdom national insurance number, if the reporting Financial Institution does not hold that number, however, in the case of new accounts opened on or after 1st July, 2014, this information is required to be obtained and reported.

(6) 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 in accordance with subsection (2).

(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 that has an obligation to submit information to the Competent Authority shall:

- (a) register with the Authority no later than 1st April in the first calendar year in which it is required to comply with reporting obligations under the Agreement, and
- (b) submit its information to the Competent Authority no later than 31st May of the year in which the information is to be reported,

registration is only required once and remains valid unless revoked by way of notification in writing 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 (8) and (9), in particular any changes to the details of the primary point of contact on record for the Financial Institution.

Reporting obligations of Financial Institutions under Annex III.

5. (1) Where a reporting Financial Institution has made an election under B. 1 (a) of Annex III to offer the alternative reporting regime in relation to applicable United Kingdom reportable accounts as set out in Annex III, this Order and the Agreement shall apply to that Financial Institution and to those reportable accounts as modified by the provisions of Annex III.

(2) An election under Annex III shall be made to the Competent Authority in accordance with the timelines and in the form as determined by the Competent Authority.

Appointment of Third Parties.

6. (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

- (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.

Inspection
and
Compliance.

7. (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.

8. 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.

9. 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 24th day of November, 2015.

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