

Seychelles

Business Tax Act, 2009

Business Tax (Taxation Information Exchange Agreement) (No. 4) Regulations, 2014

Statutory Instrument 106 of 2014

Legislation as at 8 November 2017

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Seychelles

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Statutory Instrument 106 of 2014

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1. Citation

These Regulations may be cited as the Business Tax (Taxation Information Exchange Agreement) (No. 4) Regulations, 2014.

2. Declaration and effect of Agreement

It is hereby declared that the Government of the Republic of Seychelles and the Government of the Cayman Islands have entered into an Agreement for the purpose of exchange of Information pertaining to taxes and the Agreement shall have effect in relation to the tax imposed under the Act.

Schedule

Agreement between the Republic Seychelles and the Government of the Cayman Islands concerning the exchange of information relating to tax matters

Preamble

The Government of the Republic of Seychelles and the Government of the Cayman Islands desiring to facilitate the exchange of information with respect to certain taxes

HAVE AGREED as follows:

Article 1 – Object and scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall 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 tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavors to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

Article 2 – Jurisdiction

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

Article 3 – Taxes covered

1. This Agreement applies to existing taxes of every kind and description imposed by either Contracting Party.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

Article 4 – Definitions

1. For the purposes of this Agreement, unless otherwise defined—
 - (a) the term “**Contracting Party**” means the Cayman Islands or Seychelles as the context requires;
 - (b) the term “**the Cayman Islands**” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
 - (c) the term “**Seychelles**” means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
 - (d) the term “**Contracting Party**” means the Cayman Islands or Seychelles as the context requires;
 - (e) the term “**competent authority**” means—
 - (i) in the case of Cayman Islands, the Tax Information Authority or a person or authority designated by it;
 - (ii) in the case of Seychelles, the Minister responsible for Finance or his authorized representative;
 - (f) the term “**person**” includes an individual, a company and any other body of persons;
 - (g) the term “**company**” means “any body” corporate or any entity that is treated as a body corporate for tax purposes;
 - (h) the term “**publicly traded company**” means any company whose principal class of shares is listed on a recognized 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;
 - (i) the term “**principal class of shares**” means the class or classes of shares representing a majority of the voting power and value of the company;
 - (j) the term “**recognized stock exchange**” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - (k) the term “**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;

- (l) the term “**tax**” means any tax to which this Agreement applies;
 - (m) the term “**applicant Party**” means the Contracting Party requesting information;
 - (n) the term “**requested Party**” means the Contracting Party requested to provide information;
 - (o) the term “**information gathering measures**” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - (p) the term “**information**” means any fact, statement or record in any form whatever;
 - (q) the term “**criminal tax matters**” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
 - (r) the term “**criminal laws**” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5 – Exchange of information upon request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party.
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 all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of this Agreement, have the authority to obtain and provide, upon request—
 - (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting 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. The competent authority of the applicant Party shall provide the following information in writing to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request—
 - (a) the identity of the person under examination or investigation;

- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
 - (c) the tax purpose for which the information is sought;
 - (d) the grounds for believing that the information requested is held in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
 - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
 - (f) a statement that the request is in conformity with the law and administrative practises of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of its administrative practice and that it is in conformity with this Agreement; and
 - (g) a statement that the applicant 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 forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall—
- (a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
 - (b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6 – Tax examinations aboard

1. The requested Party may allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in the territory of the requested Party.
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 applicant Party about 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 requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The Competent Authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are—
 - (a) produced for the purposes of seeking or providing legal advice; or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8 – Confidentiality

1. Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.
2. Where information provided pursuant to this Agreement for a criminal tax purpose is to be used subsequently for a non-criminal tax purpose (and vice versa) the Competent Authority which supplied the information shall be notified of this change either before the change is made where this does not give rise to disproportionate difficulties, or within a reasonable time of the change taking effect.

Article 9 – Costs

1. Each Contracting Party agrees to reimburse the other for all direct extraordinary costs incurred in providing assistance pursuant to this Agreement.

Article 10 – Implementation legislation

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

Article 11 – Mutual agreement procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavor to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 12 – Entry into force

Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect—

- (a) for criminal tax matters, on the date of entry into force, for all taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date;
- (b) with respect to all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

Article 13 – Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination through diplomatic channels.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notice of termination by the other Contracting Party.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate, this 12th day of February, 2014.

For the Government of the Cayman Islands

For the Government of the Republic of Seychelles