

VIRGIN ISLANDS
MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ORDER, 2014

ARRANGEMENT OF SECTIONS

Section

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

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2014 NO. 11

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

Mutual Legal Assistance (Tax Matters) Order, 2014

[Gazetted 27th March, 2014]

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, 2014.

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]

AGREEMENT

BETWEEN

GOVERNMENT OF THE REPUBLIC OF POLAND

AND

THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS,

FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Republic of Poland and the British Virgin Islands (“the Contracting Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Whereas the British Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently have participated actively in the OECD Global Forum on Taxation;

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

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

Article 1

Scope of 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 the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. 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.

Article 2 Jurisdiction

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party:

(a) without regard to whether the person to whom the information relates is a resident or national of a Party, or whether the person by whom the information is held is a resident or national of a Party; and

(b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

Article 3 Taxes covered

1. The taxes covered by this Agreement are:

(a) in the case of Poland

- (i) the personal income tax;
- (ii) the corporate income tax;
- (iii) the goods and services tax;

(b) in the case of the British Virgin Islands,

- (i) the income tax;
- (ii) the payroll tax; and
- (iii) the property tax.

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

Article 4 Definitions

1. In this Agreement-

(a) "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;

(b) "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of

the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;

- (c) “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means:
 - (i) in the case of Poland, the Minister of Finance or his authorized representative;
 - (ii) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (f) “Contracting Party” means Poland or the British Virgin Islands as the context requires;
- (g) "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;
- (h) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party and includes all cases where a person has been notified that proceedings concerning those matters have been initiated against that person;
- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;
- (k) “national” means:
 - (i) in relation to Poland, any individual possessing the Polish citizenship; and any legal person, partnership or association deriving its status as such from the laws in force in Poland;
 - (ii) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No.1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;

- (l) “person” includes an individual (“natural person”), a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (m) “public collective investment scheme” means any collective investment scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) “Requested Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “Requesting Party” means the party to this Agreement submitting a request for or having received information from the Requested Party;
- (p) “tax” means any tax covered by this Agreement;
- (q) “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;
- (r) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (s) “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein 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 a Requested Party shall provide upon request in writing by the Requesting Party 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 it occurred in the territory of the Requested Party. If the information received by the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the Requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use all relevant information gathering measures to provide the Requesting 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 the Requesting 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 authority, for the purposes specified in Article 1 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;
- (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; and in the case of trusts, information on settlors, trustees and beneficiaries.

5. Notwithstanding the preceding paragraphs, this Agreement does not create any obligation on the Contracting Parties to obtain or provide:

- (a) 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;
- (b) information which relates to a period more than the legally required time period for retaining the information in the jurisdiction of the Requested Party, which would be a minimum of 5 years, and where that information is in fact no longer kept.

6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive the information;

- (d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting Party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information were 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;
- (h) 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.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing explaining the reasons for its inability to obtain and provide the information or the obstacles encountered or for its refusal.

Article 6

Tax examinations (or investigations) abroad

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the prior written consent of the 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 persons concerned.

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting 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 granted, 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 person authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

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 (ordre public) of the Requested Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5 paragraph 4 shall not by reason of that fact alone constitute such a secret or process.

3. (a) 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, barrister or other admitted legal representative where such communications are:

(i) produced for the purposes of seeking or providing legal advice, or

(ii) produced for the purposes of use in existing or contemplated legal proceedings.

(b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor, barrister or other admitted legal representative from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. The Requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the Requesting Party, the competent authority of the Requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

6. 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 national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

Article 8 Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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, or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

2. The 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.

3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

Article 9 Safeguards

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10
Administrative costs

Incidence of costs incurred in providing assistance (including reasonable costs of third Parties and external advisors in connection with litigation or otherwise) shall be agreed by the Contracting Parties in accordance with the Protocol to the Agreement.

Article 11
No prejudicial or restrictive measures

1. So long as this Agreement is in force and effective, it is the intention of the Contracting Parties not to apply or introduce prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party. However, in the event that a Contracting Party has reason to believe that the other Contracting Party has introduced such prejudicial or restrictive measures, both Contracting Parties shall immediately initiate proceedings to resolve the matter.

2. A "prejudicial or restrictive measure based on harmful tax practices" is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of the term "prejudicial or restrictive measure", the term includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures include any measure which relates, directly or indirectly, to taxation matters. However, they do not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

Article 12
Implementing legislation

The Contracting Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 13
Language

Requests for assistance, the responses thereto and any other written communication between the competent authorities shall be drawn up in English. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.

Article 14
Mutual agreement procedure

1. Where difficulties or doubts arise between the Contracting 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 endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 15
Entry into force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the third month after receipt of the last notification, and shall thereupon have effect:

- (a) with respect to criminal tax matters on that date; and
- (b) with respect to all other matters covered in Article 1 for 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.

Article 16
Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing through diplomatic channels. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of 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 this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

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

DONE in duplicate at London on the 28th day of November, 2013, in the Polish and English languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF POLAND**

(Mr. Witold Sobkow)
Ambassador Extraordinary and
Plenipotentiary of the
Republic of Poland

**FOR THE GOVERNMENT OF
THE BRITISH VIRGIN ISLANDS**

(Hon. Dr. D. Orlando Smith)
Premier of the
British Virgin Islands

Made by the Minister this 28th day of February, 2014.

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