LAWS OF DOMINICA

TAX INFORMATION EXCHANGE ACT

CHAPTER 67:02

Act
1 of 1988

Current Authorised Pages

<table>
<thead>
<tr>
<th>Pages (inclusive)</th>
<th>Authorised by L.R.O.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-12</td>
<td>1/1991</td>
</tr>
</tbody>
</table>
Note on Subsidiary Legislation

This Chapter contains no Subsidiary Legislation.
CHAPTER 67:02

TAX INFORMATION EXCHANGE ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Agreements with other countries.
4. Comptroller to exercise power and authorities.
5. Secrecy.

SCHEDULE.
CHAPTER 67:02

TAX INFORMATION EXCHANGE ACT

AN ACT to make provisions authorising the enforcement of the obligations of the Commonwealth of Dominica under agreements for the exchange of information with respect to taxes.

1 of 1988.

Commencement.

[7th April 1988]

1. This Act may be cited as the –

TAX INFORMATION EXCHANGE ACT.

2. In this Act –

“agreement” means an agreement made between the Commonwealth of Dominica and another State for the exchange of information with respect to taxes;

“Minister” means the Minister responsible for Finance;

“relevant tax laws” means the tax laws pertaining to the taxes to which an agreement applies;

“the Act” means the Income Tax Act.


(2) The provisions of the agreement set out in the Schedule shall have the force of law in Dominica.

(3) The Minister may enter into an agreement on similar terms with the Government of any other country and the Minister may by Order subject to negative resolution of the House insert such an agreement in the Schedule and on so doing the inserted provisions of the agreement shall subject to this subsection have the force of law in Dominica.

4. The Comptroller of Inland Revenue may exercise all powers and authorities vested in him under the Act, particularly section 69 –

(a) to administer and process any request made pursuant to an agreement;
for the rendering of reciprocal assistance to facilitate the
administration of the Act and the relevant tax laws.

5. (1) Subject to this section, the Comptroller and every person
employed in carrying out the provisions of or having any official duty
under an agreement or the Act shall regard and deal with all documents
and information relating to any person, and all confidential information
in respect to the administration of that agreement or the Act, which may
come into his possession or to his knowledge in the course of his duties,
as secret.

(2) Nothing in this section shall apply to the disclosure of any
confidential information –

(a) to any person authorised by the Cabinet, or by any other
enactment, to receive such information;

(b) to any other person to whom such disclosure is neces-
sary for the purposes of that agreement or the Act; or

(c) to any authorised officer of the Government of a coun-
try with which an international agreement for the
avoidance of double taxation exists, for the purposes of
that international agreement.

(3) Nothing in this section shall be construed to prevent the
disclosure of information of a statistical nature, but any such informa-
tion shall be supplied in such manner as not to disclose the identity of
any person in relation to his income.

(4) Every person appointed under, or employed in carrying out
the provisions of an agreement or the Act or this Act and every person
to whom confidential information is disclosed under subsection (2)(a)
or (b) may, at the discretion of the Comptroller, be required to make an
oath or affirmation of secrecy in the manner and form approved by the
Comptroller.

(5) Any oath or affirmation under subsection (4) may be taken
before the Comptroller (who is hereby authorised to administer such
oath or affirmation) or before a Magistrate, and no fee shall be payable
therefor.

(6) The obligation as to secrecy imposed by this section shall
continue to apply in respect of any person notwithstanding that he
ceases to be appointed under or employed in carrying out the provisions
of an agreement or the Act.
(7) No person referred to in subsection (1) shall be required to produce in any court any return of income, assessment or notice of assessment or to divulge or communicate any information which comes to his knowledge in the performance of his office duties or employment under the Act or in respect to an agreement, except to the extent to which it is necessary for the purposes of the Act or that agreement.

(8) Any person who discloses or divulges any information or produces any document in contravention of this section, is liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of the Commonwealth of Dominica and the Government of the United States of America, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the "Agreement"), have agreed as follows:

Article 1

OBJECT AND SCOPE OF THE AGREEMENT

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorised pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

2. Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State.

Article 2

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:
(a) in the case of the United States of America,
   (i) Federal income taxes,
   (ii) Federal taxes on self-employment income,
   (iii) Federal taxes on transfers to avoid income tax,
   (iv) Federal estate and gift taxes,
   (v) Federal excise taxes; and

(b) in the case of the Commonwealth of Dominica,
   (i) Income Tax (including withholding taxes),
   (ii) Corporation Tax (including the tax on branch profits), and
   (iii) Social Security.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of significant changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State’s statute of limitations.

4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Contracting State.

Article 3
DEFINITIONS

1. In this Agreement, unless otherwise defined:

(a) The term “competent authority” means:
   (i) in the case of the United States of America, the Secretary of the Treasury or his delegate, and
   (ii) in the case of the Commonwealth of Dominica, the Minister of Finance or his authorised representative.

(b) The term “national” means:
   (i) in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust,
estate, association, or other entity deriving its status as such from the laws in force in the United States; and

(ii) in the case of the Commonwealth of Dominica, any citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the Commonwealth of Dominica.

(c) The term “person” includes an individual and a partnership, corporation, trust, estate, association or other legal entity.

(d) The term “tax” means any tax to which the Agreement applies.

(e) The term “information” means any fact or statement, in any form whatever, that may be relevant or material to tax administration and enforcement including (but not limited to):

(i) testimony of an individual, and

(ii) documents, records or tangible personal property of a person or Contracting State.

(f) For purposes of determining the geographical area within which jurisdiction to require production of information may be exercised, the term “United States”, means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory, and the territorial waters thereof.

(g) For purposes of determining the geographical area within which jurisdiction to require production of information may be exercised, the term “the Commonwealth of Dominica” means the island of Dominica and the territorial waters thereof.

(h) The terms “applicant State” and “requested State” mean respectively the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information.

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the Laws of the Contracting State relating to the taxes which are the subject of this Agreement.

Article 4

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting
States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.

2. The competent authority of the requested State shall endeavour to provide information upon request by the competent authority of the applicant State for the purpose referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall endeavour to take all available measures to provide the applicant State with the information requested. Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State. Laws or practices of the requested State pertaining to disclosure of information—

(a) by banks, nominees or persons acting in an agency or fiduciary capacity, or

(b) respecting ownership of interest in a person (other than solely as a creditor)

shall not prevent or otherwise affect the authority of the requested State to require the production of information. The competent authorities of the Contracting States shall have authority to obtain and provide information notwithstanding such disclosure laws and practices.

3. If information is requested by a Contracting State pursuant to paragraph 2 of this Article, the requested State shall endeavour to obtain the information requested in the same manner and form provided for in its relevant legislation as though the information was required for enforcement of its own tax laws. However, if specifically requested by the competent authority of the applicant State, the requested State shall:

(a) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;

(b) place the individual giving testimony or producing books, papers, records and other tangible property under oath;

(c) permit the presence of individuals designated by the competent authority of the applicant State as being involved in or affected by execution of the request, including an accused, counsel for the accused, individuals charged with the administration and enforcement of the domestic laws of the applicant State covered by this Agreement, and a commissioner or magistrate present for the purpose of determining issues of privilege under the laws of the applicant State;
(d) provide individuals permitted to be present with an opportunity to question, directly or through the executing authority, the individual giving testimony or producing books, papers, records and other tangible property;

(e) determine the authenticity of books, papers, records and other tangible property produced;

(f) examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;

(g) permit the competent authority of the applicant State to provide written questions to which the individual producing books, papers, records and other tangible property is to respond regarding the item produced;

(h) perform any other act not in violation of the laws or at variance with the administrative practice of the requested State;

(i) certify either that procedures requested by the competent authority of the applicant State were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;

(b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;

(d) to supply information, the disclosure of which would be contrary to public policy (order public);

(e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome
with respect to a national of the applicant State in the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to the taxes imposed by the United States or by the Commonwealth of Dominica on branch profits or on the premium income of non-resident insurers or foreign insurance companies.

5. Except as provided in paragraph 4, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 4, it has no obligation to transmit.

6. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions.

7. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the individuals contacted.

Article 5

MUTUAL AGREEMENT PROCEDURE AND COSTS

1. The competent authorities of the Contracting States shall agree to implement a program to carry out the purposes of this Agreement. This program may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques, identification of new areas of non-compliance, and joint studies of non-compliance areas.

2. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular the competent
authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of this Article.

3. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement under this Article.

4. Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

Article 6

IMPLEMENTATION

A Contracting State shall enact such legislation as may be necessary to effectuate this Agreement.

Article 7

OTHER APPLICATIONS OF THE AGREEMENT

This Agreement is consistent with the standards for an exchange of information agreement described in Section 274 (h)(6)(C) of the United States Internal Revenue Code of 1986 (the Code)(relating to deductions for attendance at foreign conventions), and referred to by cross-reference in Section 927 (e)(3)(A) of the Code (relating to foreign sales corporations), and Section 936 (d)(4) (relating to Puerto Rico and the possession tax credit).

Article 8

ENTRY INTO FORCE

This Agreement shall enter into force upon an exchange of notes by the duly authorised representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

Article 9

AMENDMENT AND TERMINATION

1. This Agreement may be modified or amended by mutual consent of the Contracting States.

2. This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.