

## ARRANGEMENT OF SECTIONS

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No. 7 of 2009.

*Saint Christopher and Nevis  
(Mutual Exchange of Information  
on Taxation Matters) Act, 2009.*

Saint Christopher 7.  
and Nevis.



I assent,

CUTHBERT M SEBASTIAN

*Governor-General.*

1<sup>st</sup> April, 2009.

**SAINT CHRISTOPHER AND NEVIS**

**No. 7 of 2009**

AN ACT to provide for the mutual exchange of information on taxation matters between Saint Christopher and Nevis and other jurisdictions; and for incidental and connected purposes.

*[Published 1<sup>st</sup> April 2009, Extra Ordinary Gazette No. 15 of 2009]*

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

**PART I  
Preliminary**

1. (1) This Act may be cited as the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, 2009.

Short title and commencement.

(2) This Act shall come into force on such date as may be appointed by order made by the Minister.

2. (1) In this Act,

Interpretation.

“Authority” means the Tax Co-operation Authority designated under section 4;

“electronic” means relating to technology and having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“electronic record” means a record processed and maintained by electronic means;

“Federation” means the Federation of Saint Christopher and Nevis;

“information” means any fact, statement, document or record in whatever form, and includes

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- (a) any fact, statement, document or record held by any bank, other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity; and
- (b) any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person, including
  - (i) in the case of a collective investment fund, information on any shares, units and other interests; and
  - (ii) in the case of a trust, information on any settlors, trustees and beneficiaries;

“items subject to legal privilege” means

- (a) any communication between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) any communication between an attorney-at-law and his client or any person representing his client or between such attorney-at-law or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) any item enclosed with or referred to in such communications and made
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

except that any item held with the intention of furthering a criminal purpose are not subject to legal privilege;

“Judge” means any High Court Judge of the Eastern Caribbean Supreme Court, Saint Christopher and Nevis Circuit acting alone or in an administrative capacity, or any other Judge of the High Court so acting and designated under subsection (3);

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“Minister” means the Minister of Finance;

“Party” means a party to a scheduled agreement;

“proceedings” means civil or criminal proceedings;

“request” means

- (a) a request made by one of the Parties to the other Party, pursuant to a scheduled agreement;
- (b) a request made by a scheduled competent authority of a scheduled country; or
- (c) a request made by the Federation to a scheduled country.

“requesting Party” means a Party making a request for information in taxation matters pursuant to the provisions of this Act;

“scheduled agreement” means an agreement entered into by the Federation pursuant to section 3(5)(a);

“scheduled competent authority” means a competent authority specified in any scheduled Agreement or the designated competent authority of a scheduled country.

“scheduled country” means a country designated by the Minister in accordance with section 3(6)(a)(i);

“taxation matters” includes any matters relating to the collection, calculation or assessment of a tax referred to in a scheduled agreement or specified in the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act.

(2) In any scheduled agreement to this Act any reference to the Saint Christopher and Nevis Tax Co-operation Authority shall be construed as a reference to the Tax Co-operation Authority designated under section 4.

(3) The Chief Justice of the Eastern Caribbean Supreme Court may, in writing, designate any judge of the High Court to act on his behalf under this Act.

3. (1) This Act shall apply for the purpose of

- (a) giving effect to the terms of a scheduled agreement for the provision of information in taxation matters; and

Implementation.

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- (b) the provision of information in taxation matters on request pursuant to the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act; including for the purposes of any proceedings taken by any party or scheduled country, as the case may be, or by any persons acting on their behalf, connected with, arising from, related to, or resulting from taxation matters.

(2) Nothing in this Act shall require the provision of information under a scheduled agreement, or under the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act,

- (a) in relation to any taxation matter that arose prior to the date of entry into force stipulated in the respective scheduled agreement; or
- (b) the operative date specified in relation to a scheduled country or, in any event, prior to the date of commencement of this Act;

except that, in the case of a scheduled agreement, nothing in this Act shall require the provision of information in relation to taxation matters that arose prior to the respective dates stipulated in the relevant Agreement, as the dates upon which the provisions of an Agreement shall have effect.

(3) A scheduled agreement shall, for such period as is specified in the agreement, have legal effect in the Federation.

(4) Nothing in this Act or any scheduled agreement shall be taken to require the provision of information to a requesting Party otherwise than

- (a) with respect to a tax of the jurisdiction of the requesting Party that is covered in the relevant scheduled agreement or a tax of a scheduled country pursuant to Rule 3 of the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act.
- (b) with respect to
  - (i) a person who is subject or potentially subject to such tax; and
  - (ii) any interest which is relevant to the determination or calculation in relation to such person of such tax, and which such person may have in an entity subject or potentially subject to such tax.

- (5) The Minister may by order subject to negative resolution
  - (a) add a schedule to this Act for the purpose of setting out and giving effect to any agreement for the provision of information in taxation matters to which Schedule shall be added subsequent agreements made with other countries; or
  - (b) amend, revoke or replace any such schedule.
- (6) The Minister may by order
  - (a) add a schedule or schedules to this Act for the purpose of specifying
    - (i) the countries (hereinafter referred to as the “scheduled countries”) that are entitled to make requests for information pursuant to the Rules outlined in the Schedule to this Act;
    - (ii) the competent authority of each such country;
    - (iii) the operative dates of this Act in relation to each such country; and
    - (iv) the scope of assistance that may be offered to each such country; or
  - (b) amend, revoke or replace any such schedule.

## **PART II**

### **The Tax Co-operation Authority**

4. (1) The Financial Secretary is hereby designated as the Tax Co-operation Authority for the purposes of this Act and any scheduled agreement and in relation to any scheduled country.

Tax Co-operation Authority.

(2) The Authority shall exercise its functions under this Act and under any scheduled agreement and in relation to any scheduled country acting alone or through a person designated by the Authority to act on his behalf, and shall be deemed to act in an administrative capacity.

5. (1) Subject to this Act, the Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of his functions under this or any other Act or any scheduled agreement or in relation to any scheduled country.

Functions of the Authority.

(2) Without prejudice to the generality of subsection (1), the principal functions of the Authority include

- (a) subject to sections 8, 17 and 22, executing requests, including but not limited to providing assistance in relation to

- (i) taking the testimony or statement of any person;
  - (ii) providing information and articles of evidence;
  - (iii) serving documents; and
  - (iv) executing searches and seizures.
- (b) ensuring compliance with any scheduled agreements and with the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act;
  - (c) advising the Minister on matters relating to any proposal or agreement for the provision of information in tax matters, any matter touching upon or relating thereto, and any other related matter at the request of the Minister;
  - (d) making determinations pursuant to the terms of any scheduled agreement or the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act as to any costs and the apportionment of such costs relating to or arising from any request;
  - (e) entering into agreements with competent authorities under agreements on matters relating to the operation thereof or issuing operating procedures to scheduled competent authorities; and
  - (f) performing such other functions as may be prescribed under this or any other Act.

Procedures for public policy determination.

6. (1) Without prejudice to section 5, the Authority may, in his discretion or shall where in his opinion there are issues of public policy, notify the Attorney General of any request received by the Authority, with particulars thereof; and the Attorney General shall be entitled, in a manner analogous to *amicus curiae*, to appear or to take part in any proceedings in the Federation, whether judicial or administrative, arising directly or indirectly from a request received by the Authority.

(2) The Authority shall deny a request, in accordance with the relevant provisions of a scheduled agreement or, in the case of a request from a scheduled country, in accordance with the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act, where the Attorney General has issued a certificate to the effect that the execution of the request is contrary to the public policy of the Federation.

**PART III**  
**Execution of Requests**

7. (1) Upon receipt of a request, and subject to the provisions of sections 6(2) and 10(1), the Authority shall determine whether the request is in compliance with the relevant scheduled agreement or the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act as the case may be and, if it is determined that there is compliance, the Authority shall execute the request in accordance with, but subject to, the provisions of the relevant scheduled agreement or the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act as the case may be and this Act.

Procedures for the execution of a request.

(2) The Authority may request such additional information from the requesting Party as may be necessary to assist the Authority in executing the request.

(3) A certificate given by the Authority that a request is in compliance with the relevant scheduled agreement or the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act as the case may be shall be taken into account by the Judge pursuant to an application under section 8(4)(a).

(4) Notwithstanding any other Act, if the execution of any request requires the service of any document or order or the seizure of any article in pursuance of any order or directions by a Judge of the High Court, any police officer of the rank of Inspector or above, if so required by the Judge of the High Court, shall assist in such service or seizure.

8. (1) Where, pursuant to a request, any person is required to testify, the Authority shall apply to a Judge for the Judge to receive such testimony as appears to him to be appropriate for the purpose of giving effect to the request, and such testimony shall be provided to the competent authority of the requesting Party.

Powers of Judge to compel witness or for production of evidence.

(2) The Judge may, in pursuance of an application under subsection (1), issue a subpoena, take evidence under oath, and exercise any other power which the High Court may exercise for the purpose of compelling testimony.

(3) A person shall not be compelled in any proceedings under this section to give evidence which he could not be compelled to give in proceedings in the Federation.

(4) Where, pursuant to a request, the Authority considers it necessary to obtain specified information or information of a specified description from any person the Authority shall

- (a) in the case of information required for proceedings in the territory of the requesting Party or related



investigations, apply to a Judge for an order to produce such information; or

- (b) in any case other than that referred to in paragraph (a), issue a notice in writing requiring the production of such information as may be specified in the notice; and such notice may require the information
  - (i) to be provided within a specified time;
  - (ii) to be provided in such form as the Authority may require; and
  - (iii) to be verified or authenticated in such manner as the Authority may require.

(5) Where information is produced pursuant to subsection (4)(b)

- (a) the Authority may take copies or extracts of any information; and
- (b) where a person claims a lien on a document, the production is without prejudice to his lien.

(6) An order under subsection (7) or a notice under subsection (4)(b)

- (a) shall not confer any right to production of, or access to, items subject to legal privilege; and
- (b) shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Relationships Act 1985, any other law or the common law.

(7) If, on an application under subsection (4)(a), the Judge is satisfied that the conditions in subsection (9) are fulfilled, he may make an order that the person who appears to him to be in possession or control of the information to which the application relates shall

- (a) produce it to a police officer to take away; or
- (b) give a police officer access to it,

within such period as the order may specify.

(8) The period to be specified in an order under subsection (7) shall be fourteen days, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(9) The conditions referred to in subsection (7) are that the Judge is satisfied that

- (a) the Authority has certified the request in accordance with section 7(3);
- (b) the information to which the request relates is under the possession or control of a person in the Federation;
- (c) the information to which the request relates does not include items subject to legal privilege or items subject to protection as secret, pursuant to the terms of a scheduled agreement or the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act as the case may be;
- (d) the provisions of section 17(1) have been complied with; and
- (e) pursuant to the terms of the relevant scheduled agreement the Rules for the Exchange of Information in Tax Matters set out in the Schedule to this Act as the case may be, there are no reasonable grounds for not granting the request.

(10) Where the Judge makes an order under subsection (7)(b) in relation to information held on any premises he may, on the application of the Authority, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the information.

(11) The Chief Justice of the Eastern Caribbean Supreme Court may make rules governing the procedure in relation to

- (a) applications for the grant, discharge and variation of orders under subsection (7); and
- (b) proceedings relating to such orders.

(12) Where the information to which an order under subsection (7) or a notice under subsection (4)(b) relates consists of information maintained as an electronic record, such information shall be produced in a form in which it can be taken away and in which it is visible and legible or in a form in which it is visible and legible, as the case may be.

(13) Where, pursuant to a request concerning criminal proceedings or investigations

- (a) an order under subsection (7) has been made or has been applied for, and has not been refused;
- (b) or a warrant under section 17(3) has been issued,

any person, knowing or suspecting that a request has been made, or that an investigation into any matter to which a request relates is taking place, makes any disclosure which is likely to prejudice the proceedings or the investigation to which the request may relate, commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(14) In proceedings against a person for an offence under subsection (13), it is a defence to prove that the person

- (a) did not know or believe that the disclosure was likely to prejudice the request or investigation; or
- (b) had lawful authority or reasonable excuse for making the disclosure.

(15) Any documents or other information obtained under an order by virtue of subsection (7) shall be brought immediately to the Authority to be dealt with according to this Act.

(16) Any person required to testify or to produce information under subsection (7) shall have the right to be represented by an attorney-at-law when he does so.

#### **PART IV** **General**

Authentication of  
official  
documents.

9. Any person may be authorised by the Authority for the purpose of the authentication of any official documents or records of the Federation.

Notification.

10. (1) Subject to subsection (2), a person who is the subject of a request for information solely in relation to a matter which is not a criminal matter or an alleged criminal matter, shall if his whereabouts or address is made known to the Authority, be served with a notice by the Authority advising of the existence of a request specifying that person, the jurisdiction making the request and the general nature of the information sought.

(2) Any person notified pursuant to subsection (1) may within fifteen days from the date of receipt of the notice, make a written submission to the Authority specifying any grounds which he wishes the Authority to consider in making its determination as to whether or not the request is in compliance with the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act or with provisions in any scheduled agreement as the case may be, including any assertions that the information requested is subject to legal privilege.

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(3) The Authority shall consider any written submission made in compliance with subsection (2), but shall not be obliged to permit or consider any oral submission by or on behalf of any person who is the subject of a request for information.

(4) Save as expressly provided in this Act, the Authority shall hold all information received as confidential, and the proceedings and deliberations of the Authority shall accordingly be closed to all persons not specifically authorised by the Authority or by this Act to be present at such proceedings or deliberations.

(5) Nothing in this Act shall require the Authority to search for or conduct enquiries into the address or whereabouts of any person who is the subject of a request in order to serve a notice to that person pursuant to subsection (1).

(6) For the purposes of subsection (1), the date of receipt of notice from the Authority is deemed to be fifteen days from the date of issuance indicated on the notice.

11. (1) A person who divulges any confidential information or gives any testimony in conformity with an order or notice issued pursuant to a request shall be deemed not to commit any offence under the Confidential Relationships Act, 1985, or under any other law for the time being in force in the Federation, by reason only of such disclosure or the giving of such testimony.

Protection of persons disclosing confidential information.

(2) Any disclosure or testimony referred to in subsection (1) shall be deemed not to be a breach of any confidential relationship between that person and any other person, and no civil claim or action whatsoever shall lie against the person making such disclosure or giving such testimony or against such person's principal or employer by reason of such disclosure or testimony.

12. Section 4 of the Confidential Relationships, Act 1985 shall be deemed not to apply to confidential information given by any person in conformity with an order or notice issued in pursuance of a request under this Act.

Restriction on application of Confidential Relationships Act, 1985.

13. (1) Without prejudice to the provisions of section 8(13), if so instructed by the Authority, the particulars of and all matters relating to a request shall be treated as confidential.

Confidentially with regard to a request.

(2) No person who is notified of a request, or is required to take any action, or produce any document or supply any information in response to or in relation to any matter to which a request relates, shall disclose the fact of the receipt of such request or any of the particulars required or documents produced or information supplied to any other person, except that person's attorney-at-law and such other persons as

the Authority may authorise, for such period as he may be notified by the Authority.

(3) This section shall be binding on the attorney-at-law of any person to whom subsection (1) applies as if he were that person.

Restriction on use of information.

14. (1) The requesting Party shall not, without the prior written consent of the Authority, transmit or use information or evidence provided pursuant to this Act for purposes, investigations or proceedings other than those stated in the request.

(2) Before the Authority gives consent under subsection (1) in relation to testimony provided or an order issued pursuant to section 8, the Authority shall apply to a Judge for directions.

Interviews and examinations with consent.

15. (1) Where

- (a) pursuant to the Rules for the Exchange of Information on Tax Matters set out in the Schedule to this Act or any relevant scheduled agreement as the case may be, the competent authority of a requesting Party requests permission for its representative to enter the Federation for the purposes of interviewing and examining the records of a specified person in the Federation; and
- (b) the person concerned notifies the Authority in writing that he consents to the interview and examination,

the representative may conduct such interview and examination, at such time and place as are agreed upon in writing by the Authority and the person concerned.

(2) In conducting an interview and examination under subsection (1), a representative may

- (a) take statements from the specified person; and
  - (b) with the consent of the specified person, make copies of, or take extracts from, any record.
- (3) A representative shall not have the power
- (a) to compel a specified person to answer any question;
  - (b) to compel a specified person to remain in any place for the purpose of an interview;
  - (c) to compel a specified person to produce any information or thing;
  - (d) to enter and search premises without the consent of the owner or occupier of the premises; or

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(e) to take information or things without the consent of the specified person.

(4) A person who consents to an interview and examination shall have the right to be advised by his attorney-at-law during the course thereof.

(5) A statement made to a representative under this section shall not, in any proceedings, be used in evidence against the person making the statement.

(6) In this section, “specified person” means a person who is subject to

(a) a tax of the jurisdiction of a requesting Party that is covered in the relevant scheduled agreement; or

(b) a tax of a scheduled country that is specified pursuant to this Act.

16. (1) For the purposes of this Act and any scheduled agreement, the service of any document shall be sufficient if delivered by hand or posted by registered post to the registered or other office of the addressee or to his last known address.

Service of notices and documents.

(2) Affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate shall be deemed sufficient proof of such service.

17. (1) Any person who, having been required under this Act to produce any information which is in his possession or under his control

Enforcement.

(a) without lawful excuse fails so to do, within such time as may be specified by a Judge by order, or by the Authority by notice; or

(b) alters, destroys, mutilates, defaces, hides or removes any information,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

(2) Any person who, contrary to section 13, informs any person, other than his attorney-at-law, of the fact of the issue of a request or of any communication relevant to the matter to which the request relates, commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) Where pursuant to a request, the Authority considers it necessary to enter and search any premises, the Authority shall apply to the High Court for the issue of a search warrant for specified premises to

search for and seize specified information or information of a specified description.

(4) On application made under subsection (3), the High Court may issue a warrant authorising the search and seizure if it is satisfied that

- (a) an order made or notice issued under section 8 in relation to information on the premises has not been complied with; or
- (b) the request for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the information; or
- (c) the conditions in section 8(9) are fulfilled in relation to any information on the premises; and
- (d) it would not be appropriate to make an order under section 8(7) in relation to the material because
  - (i) it is not practicable to communicate with any person entitled to produce the information;
  - (ii) it is not practicable to communicate with any person entitled to grant access to the information or entitled to grant entry to the premises on which the information is situated; or
  - (iii) the request for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the information.

(5) Any information seized under a warrant issued under subsection (4) shall be brought immediately to the Authority to be dealt with according to law.

(6) Any person who, when required so to do in accordance with the instructions given by a Judge pursuant to section 8, or any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year or to both such fine and imprisonment.

Immunity.

18. Neither the Authority nor any person designated under section 4 to act on his behalf shall be liable in damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was in bad faith.

19. The Minister may make Regulations generally for carrying out the purposes and of this Act and without prejudice to the generality of the foregoing, the Minister may make Regulations prescribing the forms to be used for the purposes of this Act. Regulations.

## **SCHEDULE**

(Section 2, 3(6)(a)(i))

### **THE RULES FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS**

These rules shall govern the exchange of information with respect to taxes between the Federation and scheduled countries.

#### **1. Object and Scope**

- (1) The competent authorities of the Federation and scheduled countries shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the respective countries concerning taxes covered within these rules. 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.
- (2) Information shall be exchanged in accordance with the provisions of these rules and shall be treated as confidential in the manner provided in Rule 8.
- (3) The rights and safeguards secured to persons by the laws or administrative practice of the requested country remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

#### **2. Jurisdiction**

A requested country 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.

#### **3. Taxes Covered**

- (1) These rules shall apply:
  - (a) to the following taxes imposed by or on behalf of the Federation or any scheduled country:
    - (i) taxes on income or profits;
    - (ii) taxes on capital;
    - (iii) taxes on net wealth;
    - (iv) estate, inheritance or gift taxes;
  - (b) to the taxes in categories referred to in subparagraph (a) above, which are imposed by or on behalf of political sub-divisions or local authorities of a scheduled country if official notice of this is provided to and accepted by the Federation.



- (2) The Federation and any scheduled country, may mutually agree that these rules shall also apply to indirect taxes.
- (3) These Rules shall also apply to any identical taxes imposed after the date of a country being included in the Schedule in addition to or in place of the existing taxes. These Rules shall also apply to any substantially similar taxes imposed after the date of a country being included in Schedule in addition to or in place of the existing taxes if the competent authorities of the Federation and any scheduled country so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Federation and any scheduled country in the form of an exchange of letters. The competent authorities of the Federation and scheduled countries shall notify each other of any substantial changes to the taxation and related information gathering measures covered by these Rules.

#### **4. Definitions**

- (1) For the purposes of these Rules unless otherwise defined:
  - (a) the term “scheduled country” means any country that has been approved by the Government of the Federation to be included in the Schedule as a result of
    - (i) the existence of a bilateral agreement or arrangement between the Federation and that country that facilitates trade and investment in the Federation by nationals or residents of that country; or
    - (ii) the existence of a Double Taxation Agreement between the Federation and that country, if that Agreement does not cover exchange of information in tax matters to the OECD standard.
  - (b) the term “competent authority” means the authorities designated by the Federation and any scheduled country as indicated by notice in writing as the authority to make and receive requests for exchange of information under this Act.
  - (c) the term “person” includes an individual, a company and any other body of persons;
  - (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (e) the term “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;
  - (f) 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;
  - (g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Federation and a scheduled country;
  - (h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;

- (i) 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;
  - (j) the term “tax” means any tax to which these Rules applies;
  - (k) the term “applicant country” means the Federation or a scheduled country requesting information;
  - (l) the term “requested country” means the Federation or a scheduled country requested to provide information;
  - (m) the term “information gathering measures” means laws and administrative or judicial procedures that enable the Federation and any scheduled country to obtain and provide the requested information;
  - (n) the term “information” means any fact, statement or record in any form whatever;
  - (o) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant country;
  - (p) 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.
  - (q) the term “the Federation” means the Federation of St. Christopher and Nevis.
- (2) As regards the application of these Rules at any time by the Federation or a scheduled country, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of the Federation or the relevant scheduled country applying these Rules.

## **5. Exchange of Information upon Request**

- (1) The competent authority of the requested country shall provide upon request information for the purposes referred to in Rule 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested country if such conduct occurred in the requested country.
- (2) If the information in the possession of the competent authority of the requested country is not sufficient to enable it to comply with the request for information, that country shall use all relevant information gathering measures to provide the applicant country with the information requested, notwithstanding that the requested country may not need such information for its own tax purposes.
- (3) If specifically requested by the competent authority of an applicant country, the competent authority of the requested country shall provide information under this

Rule, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

- (4) The Federation and each scheduled country shall ensure that its competent authorities for the purposes specified in Rule 1 of these Rules, 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, “Anstalten” and other persons, including, within the constraints of Rule 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, these Rules do not create an obligation on the Federation or scheduled countries 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 country shall provide the following information to the competent authority of the requested country when making a request for information pursuant to these Rules 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 country wishes to receive the information from the requested country;
  - (c) the tax purpose for which the information is sought;
  - (d) grounds for believing that the information requested is held in the requested country or is in the possession or control of a person within the jurisdiction of the requested country;
  - (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 practices of the applicant country, that if the requested information was within the jurisdiction of the applicant country then the competent authority of the applicant country would be able to obtain the information under the laws of the applicant country or in the normal course of administrative practice and that it is in conformity with these Rules;
  - (g) a statement that the applicant country 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 country shall forward the requested information as promptly as possible to the applicant country. To ensure a prompt response, the competent authority of the requested country shall:
  - (a) confirm receipt of a request in writing to the competent authority of the applicant country and shall notify the competent authority of the applicant country of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - (b) if the competent authority of the requested country 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 country, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

#### **6. Tax Examinations Abroad**

- (1) The Federation may allow representatives of the competent authority of a scheduled country to enter the territory of the Federation and a scheduled country may allow representation of the competent authority of the Federation to enter into its territory to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the requesting country shall notify the competent authority of the requested country of the time and place of the meeting with the individuals concerned.
- (2) At the request of the competent authority of the Federation or a scheduled country, the competent authority of the requested country may allow representatives of the competent authority of the requesting country to be present at the appropriate part of a tax examination in the requested country.
- (3) If the request referred to in paragraph 2 is acceded to, the competent authority of the country conducting the examination shall, as soon as possible, notify the competent authority of the requested country 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 requesting country for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the country conducting the examination.

#### **7. Possibility of Declining a Request**

- (1) The requested country shall not be required to obtain or provide information that the applicant country 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 country 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 the Federation or a scheduled country 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 Rule 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 the Federation or a scheduled country 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 country may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
- (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 country may decline a request for information if the information is requested by the applicant country to administer or enforce a provision of the tax law of the applicant country, or any requirement connected therewith, which discriminates against a national of the requested country as compared with a national of the applicant country in the same circumstances.

## **8. Confidentiality**

Any information received by the Federation or a scheduled country under these Rules shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Federation and the scheduled country 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 country.

## **9. Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Federation and the Scheduled Country concerned with any particular request for information.

## **10. Implementation Legislation**

The Federation and scheduled countries shall enact any legislation necessary to comply with, and give effect to, the terms of these Rules.

## **11. Language**

Requests for assistance and answers thereto shall be drawn up in English, French or any other language agreed bilaterally between the Federation and a scheduled country.

## **12. Other international agreements or arrangements**

The possibilities of assistance provided by these Rules do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Federation and any scheduled country which relate to co-operation in tax matters.

**13. Mutual Agreement Procedure**

- (1) Where difficulties or doubts arise between the Federation and any scheduled country regarding the implementation or interpretation of these Rules, the competent authorities of the Federation and the relevant scheduled country shall endeavour to resolve the matter by mutual agreement.
- (2) In addition to the Rules referred to in paragraph 1, the competent authorities of the Federation and any scheduled country may mutually agree:
  - (a) on the procedures to be used under Rules 5 and 6;
  - (b) on the language to be used in making and responding to requests in accordance with Rule 11.
- (3) The competent authorities of the Federation and any scheduled country may communicate with each other directly for purposes of reaching agreement under this Rule.
- (4) Any agreement between the competent authorities of the Federation and any scheduled country shall be effective only between the Federation and the relevant scheduled country.
- (5) The Federation and a scheduled country may also agree on other forms of dispute resolution.

**14. Termination**

- (1) The Federation or any scheduled country may terminate their mutual cooperation under these Rules by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other country.
- (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 notification of termination.
- (3) The Federation or a scheduled country that terminates their mutual cooperation under these Rules shall remain bound by the provisions of Rule 8 with respect to any information obtained under these Rules.

PATRICE NISBETT  
*Deputy Speaker*

Passed by the National Assembly this 26<sup>th</sup> day of March, 2009

JOSÉ LLOYD  
*Clerk of the National Assembly*