



STATUTORY INSTRUMENTS.

S.I. No. 21 of 2010



EXCHANGE OF INFORMATION RELATING TO TAXES (ANGUILLA)
ORDER 2010

(Prn. A10/0105)

EXCHANGE OF INFORMATION RELATING TO TAXES (ANGUILLA)
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WHEREAS it is enacted by section 826(1B) (inserted by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that if the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to exchanging information for the purposes of the prevention and detection of tax evasion in the case of taxes of any kind or description imposed by the laws of the State or by the laws of that territory, and that it is expedient that those arrangements should have the force of law, and that the order so made is specified in Part 3 of Schedule 24A of the Taxes Consolidation Act 1997, then subject to section 826 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law as if such order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 3 of Schedule 24A:

AND WHEREAS it is further enacted by section 826(6) of the Taxes Consolidation Act 1997 that where such an order is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1B) of the Taxes Consolidation Act 1997, hereby order as follows:

1. This Order may be cited as the Exchange of Information Relating to Taxes (Anguilla) Order 2010.
2. It is declared—
 - (a) that the arrangements specified in the Agreement, the text of which is set out in the Schedule, have been made with the Government of Anguilla in relation to exchanging information for the purposes of the prevention and detection of tax evasion, and
 - (b) that it is expedient that those arrangements should have the force of law.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th February, 2010.*

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF ANGUILLA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Government of Ireland and the Government of Anguilla (“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 Anguilla on 5 March 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;

Whereas in entering into the Agreement, the intention of each contracting party is not to propose the application of prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other contracting party so long as the Agreement is in force and the contracting parties are meeting their obligations under the Agreement;

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, national or citizen of a party, or whether the person by whom the information is held is a resident, national or citizen 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 Ireland:
 - (i) income tax;
 - (ii) income levy;
 - (iii) corporation tax;
 - (iv) capital gains tax;
 - (v) capital acquisitions tax;
 - (vi) stamp duty;
 - (vii) value added tax; and
 - (viii) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries;
- (b) in the case of Anguilla:
 - (i) property tax;
 - (ii) stamp duty;
 - (iii) accommodation tax;

- (iv) vacation residential asset levy; and
- (v) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries.

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 sub-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) “Anguilla” means the territory of Anguilla;
- (b) “Ireland” means Ireland and includes any area outside the territorial waters of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;
- (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, in the case of Ireland, the Revenue Commissioners or their authorised representative and, in the case of Anguilla, the Permanent Secretary in the Ministry of Finance or a person or authority designated by him in writing;
- (f) “contracting party” means Ireland or Anguilla 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 laws;
- (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting contracting party;

- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a contracting party to obtain and provide the information requested;
- (k) “person” includes a 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;
- (l) “prejudicial or restrictive measures based on harmful tax practices” means measures applied by one contracting party to residents or citizens 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 and “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements;
- (m) “public collective investment scheme” means any collective scheme or fund, 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.

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 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 legal and beneficial ownership of companies, partnerships, trusts 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, beneficiaries and protectors.

5. Notwithstanding the preceding paragraphs, 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 schemes unless such information can be obtained without giving rise to disproportionate difficulties.

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 territory 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, including 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 to explain the reasons for its inability or the obstacles or 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 of not less than fourteen days 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 law 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 law.

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 paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. This Agreement shall not impose on a contracting party an obligation to provide information held that is subject to 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 or citizen of the requested party as compared with a national or citizen 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 proceedings.

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 contracting parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the contracting parties in accordance with a Memorandum of Understanding.

ARTICLE 11

IMPLEMENTING LEGISLATION

Ireland and Anguilla shall, on entry into force of this Agreement, have any legislation necessary to comply with, and give effect to, the terms of this Agreement.

ARTICLE 12

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 13

ENTRY INTO FORCE

Each of the contracting parties shall notify to the other in writing 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 date of the later 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 14

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. 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 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 at London in duplicate this 22nd day of July 2009.

For the Government of Ireland:

For the Government of Anguilla:

Bobby McDonagh,
Ambassador of Ireland
to the United Kingdom.

Osborne Fleming,
Chief Minister.

PROTOCOL

At the moment of signing the Agreement between the Government of Ireland and the Government of Anguilla for the Exchange of Information Relating to Taxes, the undersigned have agreed that the following provision shall form an integral part of the Agreement:

In the event that either contracting party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other contracting party, that other contracting party may suspend the operation of the Agreement for so long as such measures apply. If the Agreement is suspended 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 suspension 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 Protocol.

Done at London in duplicate this 22nd day of July 2009.

For the Government of Ireland:

For the Government of Anguilla:

Bobby McDonagh,
Ambassador of Ireland
to the United Kingdom.

Osborne Fleming,
Chief Minister.



GIVEN under the Official Seal of the Government,
26 January 2010.

MARY COUGHLAN,
Tánaiste.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order gives the force of law to the Tax Information Exchange Agreement (TIEA) between Ireland and Anguilla, which is set out in the Schedule to the Order. The Agreement was signed in London on 22 July 2009.

The provisions of the Agreement are summarised below.

The Tax Information Exchange Agreement (TIEA) is based on a model agreement that was developed by the OECD. The Agreement allows the tax authorities of Ireland or Anguilla to request information from each other in relation to tax matters under investigation, in particular, for bank account information and for information concerning the beneficial ownership of companies, trusts and partnerships. The taxes covered in the case of Ireland are income tax; the income levy; corporation tax; capital gains tax; capital acquisitions tax; stamp duty; value added tax; and levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries.

There are also provisions in the Agreement that allow each Party to carry out tax investigations in the territory of the other Party, that allow for the possibility of declining a request, that cover confidentiality and that deal with which Party should bear certain costs incurred in relation to exchanging information under the Agreement. There are also provisions that allow the competent authorities of both Parties to resolve difficulties concerning the interpretation or application of the Agreement.

The Agreement will enter into force when each country notifies the other of the completion of its necessary internal procedures for bringing the Agreement into force. The Agreement will be effective for criminal tax matters from that date and for all matters covered by the Agreement from that date also but only in respect of taxable periods beginning on or after that date.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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