



STATUTORY INSTRUMENTS.

S.I. No. 398 of 2013



EXCHANGE OF INFORMATION RELATING TO TAXES AND TAX
MATTERS (DOMINICA) ORDER 2013

EXCHANGE OF INFORMATION RELATING TO TAXES AND TAX
MATTERS (DOMINICA) ORDER 2013

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 where 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 and Tax Matters (Dominica) Order 2013.
2. It is declared that—
 - (a) the arrangements specified in the Agreement, the text of which is set out in the Schedule, have been made with the Government of the Commonwealth of Dominica in relation to exchanging information for the purposes of the prevention and detection of tax evasion, and
 - (b) 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 11th October, 2013.*

SCHEDULE
AGREEMENT
BETWEEN
THE GOVERNMENT OF IRELAND
AND
THE GOVERNMENT OF THE
COMMONWEALTH OF DOMINICA
ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES
AND TAX MATTERS

Whereas the Government of Ireland and the Government of the Commonwealth of Dominica (“the Contracting Parties”) recognise the need for cooperation and the exchange of information with respect to tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes and tax matters;

NOW, therefore, the Contracting Parties desiring to conclude an Agreement to facilitate the exchange of information with respect to taxes and tax matters have agreed as follows:

ARTICLE 1

SCOPE OF AGREEMENT

1. The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes and tax matters covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

2. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2

JURISDICTION

1. To enable this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is in possession or control of, a resident or national of a Contracting Party.

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

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the Contracting Parties at the date of signature of the Agreement.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4

DEFINITIONS

1. In this Agreement, unless otherwise defined-

(a) the term “Commonwealth of Dominica” means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights;

(b) the term “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) the term “collective investment fund or scheme” means any pooled investment vehicle irrespective of legal form;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “competent authority” means
 - (i) in respect of the Commonwealth of Dominica, the Minister for Finance or the Minister’s authorised representative and,
 - (ii) in respect of Ireland, the Revenue Commissioners or their authorised representative;
- (f) the term “Contracting Party” means the Commonwealth of Dominica or Ireland as the context requires;
- (g) 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 laws;
- (h) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (i) the term “information” means any fact, statement, document or record in any form whatever;
- (j) the term “information gathering measures” means laws, regulations and administrative or judicial procedures enabling a Contracting Party to obtain and provide the requested information;
- (k) the term “national” means-
 - (i) in respect of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust, estate, association or any other entity deriving its status as such from the laws in force in the Commonwealth of Dominica;
 - (ii) in relation to Ireland, any individual possessing citizenship of Ireland and any legal person, partnership, association or other entity deriving its status as such from the laws in force in Ireland;
- (l) the term “person” includes an individual, a company, and any other body of persons;
- (m) 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;
- (n) 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;

- (o) 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 restricted to a limited group of investors;
- (p) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (q) the term “Requested Party” means the Contracting Party that has been requested to provide or that has provided information in response to a request;
- (r) the term “Requesting Party” means the Contracting Party requesting information or that has received information from the Requested Party;
- (s) the term “tax” means any tax covered by this Agreement.

2. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request in writing by the competent authority of the Requesting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the Requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the territorial jurisdiction of the Requested Party.

2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use, all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information

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

4. Each Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, and other persons including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;
 - (i) in the case of trusts, information on settlors, trustees, protectors, and beneficiaries;
 - (ii) in the case of foundations, information on founders, members of the foundation council and beneficiaries;
 - (iii) in the case of entities that are neither trusts nor foundations, equivalent information to the information in subparagraphs (i) and (ii) of this paragraph.

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 funds or 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 that information;
- (d) the tax purposes for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the tax laws of the Requesting Party with respect to the person identified as per subparagraph (a) of this paragraph;

- (f) grounds for believing that the information requested is held or is in the possession or control of a person within the territorial jurisdiction of the Requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) 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 was 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;
- (i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

8. If the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal to provide the requested information.

ARTICLE 6

TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

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

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit representatives of the competent authority of the

Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

3. If the request referred to in Paragraph 2 of this Article is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination, and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline a request for information where:

- (a) the request is not made in conformity with this Agreement; or
- (b) 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 difficulties; or
- (c) the disclosure of the information requested would be contrary to public policy.

2. The provisions of 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. Notwithstanding the foregoing, the information described in Paragraph 4 of Article 5 shall not be treated as such a secret or trade process, merely because it meets the criteria in that paragraph.

3. This Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister or other admitted legal representatives where such communications are:

- (i) produced for the purposes of seeking or providing legal advice; or
- (ii) produced for the purposes of use in existing or contemplated legal proceedings.

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 or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws.

6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. All information received by a Contracting Party under this Agreement shall be kept confidential.

2. Such information may be disclosed only to persons and authorities (including judicial and administrative authorities) in the jurisdiction of the Contracting Party concerned with the purposes specified in Article 1 of this Agreement and shall only be used by such persons or authorities for such purposes. For such purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Information provided to a Requesting Party under this Agreement shall not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

ARTICLE 9

COSTS

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

ARTICLE 10

IMPLEMENTATION LEGISLATION

The Contracting Parties shall take all necessary steps to give effect to the terms of this Agreement.

ARTICLE 11

LANGUAGE

Requests for assistance and responses thereto shall be drawn up in English.

ARTICLE 12

MUTUAL AGREEMENT PROCEDURE

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

2. In addition to the efforts referred to in Paragraph 1 of this Article, the competent authorities of the Contracting Parties may mutually agree the procedures to be used under Articles 5, 6 and 9.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 13

ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing of the completion of their necessary internal procedures required by their respective laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of the notifications. Upon entry into force, it shall have effect:

- (a) with respect to criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on the date of entry into force of this Agreement, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 14

TERMINATION

1. Either Contracting Party may terminate this Agreement by serving a notice of termination in writing through the diplomatic channel.

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 notice of termination by the other Contracting Party.

3. Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

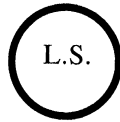
DONE, this 8th day of July 2013, in duplicate in the English language.

BOBBY McDONAGH

FRANCINE BARON

**FOR THE GOVERNMENT OF
IRELAND**

**FOR THE GOVERNMENT OF
THE COMMONWEALTH OF
DOMINICA**



GIVEN under the Official Seal of the Government,
8 October 2013.

ENDA KENNY,
Taoiseach.

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