CAYMAN ISLANDS

Supplement No. published with Gazette No. dated , 2008.

A BILL FOR A LAW TO AMEND THE TAX INFORMATION AUTHORITY LAW, 2005 TO ENHANCE THE ABILITY OF THE CAYMAN ISLANDS TO PROVIDE INFORMATION RELATING TO TAXATION MATTERS TO OTHER JURISDICTIONS IN ACCORDANCE WITH INTERNATIONAL CO-OPERATION PROTOCOLS IN TAXATION MATTERS; AND TO MAKE PROVISION FOR RELATED MATTERS

THE TAX INFORMATION AUTHORITY (AMENDMENT) BILL, 2008

MEMORANDUM OF OBJECTS AND REASONS

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Tax Information Authority Law, 2005 to enhance the ability of the Cayman Islands to provide information relating to taxation matters to other jurisdictions in accordance with international co-operation protocols in taxation matters. The Bill provides for a parallel mechanism to the existing provisions relating to bilateral agreements with the Cayman Islands for the provision of information on taxation matters.

The mechanism to facilitate the provision of information relating to taxation matters to other specified jurisdictions is provided in clause 10 of the Bill by the insertion of new sections 8A to 8G in the principal Law.

Section 8A enables a request to be made for the provision of information relating to the administration and enforcement of the laws of specified jurisdictions concerning certain taxes.

Section 8B provides the jurisdictional scope of requests for information.

Section 8C sets out the requirements for a request for information.

Section 8D prescribes the circumstances in which a request for information can be refused.

Section 8E contains confidentiality provisions.

Sections 8F and 8G deal with certain administrative matters consequent on the execution of a request for information.

The Bill also contains amendments that are consequential upon the inclusion of the new sections 8A to 8G in the principal Law.

THE TAX INFORMATION AUTHORITY (AMENDMENT) BILL, 2008

ARRANGEMENT OF CLAUSES

1. Short title
2. Insertion of heading in the Tax Information Authority Law, 2005 - Part I - Preliminary
3. Amendment of section 2 - interpretation
4. Repeal and substitution of section 3 - implementation
5. Insertion of heading - Part II - The Tax Information Authority
6. Amendment of section 4 - Tax Information Authority
7. Amendment of section 5 - functions of the Authority
8. Amendment of section 6 - procedures for public policy determination
9. Insertion of heading - Part III – Execution of requests
10. Amendment of section 7 - procedures for the execution of a request
11. Amendment of section 8 - powers of Judge to compel witness or for production of evidence
12. Insertion of Part IV - requests for information from scheduled Countries
13. Insertion of heading - Part V - General
14. Amendment of section 10 - notification
15. Amendment of section 15 - interviews and examinations with consent
16. Amendment of section 17 - enforcement

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE TAX INFORMATION AUTHORITY LAW, 2005 TO ENHANCE THE ABILITY OF THE CAYMAN ISLANDS TO PROVIDE INFORMATION RELATING TO TAXATION MATTERS TO OTHER JURISDICTIONS IN ACCORDANCE WITH INTERNATIONAL CO-OPERATION PROTOCOLS IN TAXATION MATTERS; AND TO MAKE PROVISION FOR RELATED MATTERS

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Tax Information Authority (Amendment) Law, 2008.

Insertion of heading in the Tax Information Authority Law, 2005 - Part I - Preliminary (Law 1 of 2005)

2. The Tax Information Authority Law, 2005, in this Law referred to as the "principal Law", is amended by inserting above section 1 the following heading -

"PART I – PRELIMINARY".

Amendment of section 2 - interpretation

3. The principal Law is amended in section 2(1) as follows -

(a) by deleting the definition of the term "information" and substituting the following definition -

" "information" means any fact, statement, document or record in whatever form, and includes -

(a) any fact, statement, document or record held by banks, other financial institutions, or any persons, including nominees and trustees, acting in an agency or fiduciary capacity; and

(b) any fact, statement, document or record regarding the beneficial ownership of companies, partnerships and other persons, including -

(i) in the case of collective investment funds, information on shares, units and other interests; and

(ii) in the case of trusts, information on settlors, trustees and beneficiaries;";

(b) by inserting, in the appropriate alphabetical sequence, the following definitions -

" "items subject to legal privilege" means -

(a) communications 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) communications 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) items 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;

but items held with the intention of furthering a criminal purpose are not subject to legal privilege;

"scheduled competent authority" means a competent authority specified in a schedule to this Law pursuant to section 3(6)(a)(ii);

"scheduled Country" means a country specified in a schedule to this Law pursuant to section 3(6)(a)(i);";

(c) in the definition of the term "request", by inserting after the word "Agreement" the words "or a request made by a scheduled competent authority pursuant to Part IV";

(d) in the definition of the term "requesting Party" by inserting after the words "a request" the words "and includes a scheduled Country, as the context may require";

(e) in the definition of the term "scheduled Agreement" by inserting before the word "schedule" the word "relevant"; and

(f) in the definition of the term "taxation matters" by inserting after the word "Agreement" the words "or specified in a schedule to this Law pursuant to section 3(6)(a)(iii),".

Repeal and substitution of section 3 - implementation

4. The principal Law is amended by repealing section 3 and substituting the following section -

"Implementation

3. (1) This Law 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

(b) for the purpose of the provision of information in taxation matters on request to a scheduled Country pursuant to Part IV;

including for the purposes of any proceedings taken by Parties or scheduled Countries, 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 Law shall require the provision of information under a scheduled Agreement, or under Part IV, in relation to any taxation matter that arose prior to the date of entry into force stipulated in the respective Agreement or the operative date specified in relation to a scheduled Country or, in any event, prior to the date of commencement of this Law; except that, in the case of the scheduled Agreement set out in Schedule 1, nothing in this Law shall require the provision of information under that Agreement in relation to taxation matters that arose prior to the respective dates stipulated, in Article 12(1) of that Agreement, as the dates upon which the provisions of that Agreement shall

have effect.

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

(4) Nothing in this Law 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 that is specified in a schedule to this Law pursuant to section 3(6)(a)(iii) in relation to that Country; or

(b) with respect to -

(i) a person who is subject or potentially subject to such tax; and

(ii) an interest (if any) 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 not subject or potentially subject to such tax.

(5) The Governor may by order subject to affirmative resolution -

(a) add a schedule to this Law for the purpose of setting out and giving effect to an agreement for the provision of information in taxation matters; or

(b) amend, revoke or replace any such schedule.

(6) The Governor may by order -

(a) add a schedule to this Law for the purpose of specifying -

(i) the countries that are entitled to make requests for information pursuant to Part IV;

(ii) the competent authority of each such country;

(iii) the taxation matters to which the

requests of each such country may relate;

(iv) the operative dates of this Law in relation to each such country; and

(v) the scope of assistance that may be offered to each such country; or

(b) amend, revoke or replace any such schedule.".

Insertion of heading - Part II - The Tax Information Authority

5. The principal Law is amended by inserting above section 4 the following heading -

"PART II – THE TAX INFORMATION AUTHORITY".

Amendment of section 4 - Tax Information Authority

6. The principal Law is amended in section 4 by inserting after the word "Agreement" wherever it appears the words "and in relation to any scheduled Country".

Amendment of section 5 - functions of the Authority

7. The principal Law is amended in section 5 as follows -

(a) in subsection (1) by inserting after the word "Agreement" the words "or in relation to any scheduled Country"; and

(b) in subsection (2) as follows -

(i) in paragraph (a) by deleting "sections 8" and substituting "sections 8, 15";

(ii) in paragraph (b) by inserting after the word "Agreements" the words "and with Part IV";

(iii) in paragraph (d) by inserting after the word "Agreement" the words "or Part IV"; and

(iv) in paragraph (e) by inserting after the word "thereof" the words "or issuing operating procedures to scheduled competent authorities".

Amendment of section 6 - procedures for public policy determination

8. The principal Law is amended in section 6(2) by inserting after the word "Agreement" the words "or, in the case of a request from a scheduled Country, in accordance with Part IV".

Insertion of heading - Part III – Execution of requests

9. The principal Law is amended by inserting above section 7 the following heading -

"PART III – EXECUTION OF REQUESTS".

Amendment of section 7 - procedures for the execution of a request

10. The principal Law is amended in section 7(1) and (3) by inserting after the word "Agreement" wherever it appears, the words "or Part IV, as the case may be,".

Amendment of section 8 - powers of Judge to compel witness or for production of evidence

11. The principal Law is amended in section 8 as follows -

(a) in subsection (8) by deleting the word "seven" and substituting the word "fourteen";

(b) in subsection (9)(c) and (e) by inserting after the word "Agreement" the words "or Part IV, as the case may be"; and

(c) in subsection (15) by deleting the word "written".

Insertion of Part IV - requests for information from scheduled Countries

12. The principal Law is amended by inserting after section 8 the following Part -

"PART IV – REQUESTS FOR INFORMATION FROM SCHEDULED COUNTRIES

Scope of assistance

8A. (1) Requests may be made under this Part by the relevant scheduled competent authority for the provision of' information relating to the administration and enforcement of the laws of a scheduled Country concerning the taxes specified in a schedule to this Law pursuant to section 3(6)(a)(iii) in relation to that Country, including information that may be relevant -

(a) to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or

(b) to the investigation or prosecution of criminal tax matters in relation to such persons.

(2) Information shall be provided in accordance with this Law -

(a) notwithstanding that the Islands may not need such information for its own tax purposes; and

(b) without regard to whether the conduct being investigated would constitute a crime under the laws of the Islands if it had occurred in the Islands.

(3) The assistance which may be provided by the Authority to a scheduled competent authority shall be of the types specified in sections 5(2)(a) and 15.

Jurisdiction

8B. Where the information which is the subject of a request for information received from a scheduled competent

authority is present within the Islands, or in the possession or control of a person subject to the jurisdiction of the Islands, such information shall be provided by the Authority in accordance with this Law without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of the Islands or the scheduled Country.

Provision of information

8C. (1) The Authority shall in accordance with this Law provide, upon request by a scheduled competent authority made pursuant to this Part, information for the purposes referred to in section 8A(1).

(2) If specifically requested by the scheduled competent authority, the Authority shall provide information, in accordance with the laws of the Islands, in the form of depositions of witnesses and authenticated copies of original records.

(3) In making a request for information the scheduled competent authority making the request shall provide the Authority with -

(a) the identity of the taxpayer under examination or investigation;
(b) the nature of the information requested;
(c) the tax purpose for which the information is sought;
(d reasonable grounds for believing that the information requested is present in the Islands or is in the possession or control of a person subject to the jurisdiction of the Islands;
(e) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
(f) an undertaking that all information provided in relation to a request will be kept confidential to the extent required by section 8E;
(g) a declaration that the request conforms to the law and administrative practice of the scheduled Country making the request, and

that the information requested would be obtainable by that scheduled Country under its laws in similar circumstances for its own tax purposes; and

(h) an undertaking that there will be compliance with sections 14 and 8E(3).

(6) If the Authority is unable to provide the information requested within a reasonable period relative to the nature of the request, or if obstacles are encountered in furnishing the information, or if the Authority declines the request or is otherwise unable to provide the information, it shall immediately inform the scheduled competent authority of the reasons therefor.

Declining requests

8D. (1) The Authority may decline to assist -

(a) where the request is not made in conformity with this Part;

(b) where the scheduled Country has not pursued all means available in its own territory, 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 of the Islands.

(2) The provision of assistance in accordance with this Part shall not impose any obligation on the Authority to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process, and information falling within paragraph (a) or (b) of the definition of the term "information" in section 2 shall not by reason of that fact alone constitute such a secret or process.

(3) 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.

(4) The Authority shall not be required to obtain and provide information which the scheduled Country making the request would be unable to obtain in similar

circumstances under its own laws for the purpose of the enforcement of its own tax laws.

Confidentiality

8E. (1) Subject to subsection (2) and section 10, all information provided and received by the Authority and any scheduled competent authority in relation to a request made under this Part shall be kept confidential.

(2) Information provided or received by the Authority or a scheduled competent authority shall be disclosed only to persons or authorities (including judicial, administrative, and governmental oversight authorities) officially concerned with the purposes specified in section 8A(1), and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal, and, for these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

(3) Information provided to a scheduled Country shall not be disclosed to any third party.

Costs

8F. A scheduled Country shall reimburse the Authority for direct out of pocket costs of executing a request (including direct out of pocket costs of any litigation that may arise directly relating to a request), on a basis agreed between the Authority and the relevant scheduled competent authority.

Consultation procedure

8G. In the event that executing a request or requests occasions undue difficulty for the Authority, either as a result of the number or the complexity of requests, the Authority shall consult with the relevant scheduled competent authority with a view to resolving the difficulty.".

Insertion of heading - Part V - General

13. The principal Law is amended by inserting above section 9 the following heading -

"**PART V – GENERAL**".

Amendment of section 10 - notification

14. The principal Law is amended in section 10 as follows -

(a) in subsection (1) by inserting after the word "Agreement" the words "or Part IV, as the case may be"; and

(b) in subsection (3) by deleting the words "or any other Law".

Amendment of section 15 - interviews and examinations with consent

15. The principal Law is amended in section 15 as follows -

(a) in subsection (1) by inserting after the word "Agreement" the words "or Part IV, as the case may be"; and

(b) by repealing subsection (6) and substituting the following subsection –

" (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 in a schedule to this Law pursuant to section 3(6)(a)(iii) in relation to that Country.".

Amendment of section 17 - enforcement

16. The principal Law is amended in section 17(1)(b) by deleting the word "destroys" and substituting the words "alters, destroys".

Passed by the Legislative Assembly the day of , 2008.

Speaker.

Clerk of the Legislative Assembly.