

Tax Information Exchange Agreements Preliminary Hearing

4 August 2010



Purpose of Agreements

- To allow for effective Exchange of Information between the Tax Authorities.



SOUTH AFRICA / GUERNSEY TAX INFORMATION EXCHANGE AGREEMENT



Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Guernsey Tax Information Exchange Agreement are as follows:



Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.



Article 2: Taxes Covered

- This Article is in line with the OECD Model and extends exchanges to taxes of every kind and description.



Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
 - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
 - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.



Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b)(i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
 - (b)(ii) in the case of trusts, information on settlors, trustees and beneficiaries.



Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party 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.



Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.



Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- No obligation to supply information which the requesting Party would not itself be able to supply.



Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received 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.



Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.



Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the 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.



Article 10: Mutual Assistance Procedure

- If the competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance and jointly study non-compliance areas.
- This provision is not present in all the TIEA's.

SOUTH AFRICA / CAYMAN ISLANDS TAX INFORMATION EXCHANGE AGREEMENT

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- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Cayman Islands Tax Information Exchange Agreement are as follows:



Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
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 - (c) in the case of trusts, information on settlors, trustees and beneficiaries.



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Article 8: Costs

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Article 9: Mutual Agreement Procedure

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SOUTH AFRICA / SAN MARINO TAX INFORMATION EXCHANGE AGREEMENT



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- Articles of interest in the South Africa – San Marino Tax Information Exchange Agreement are as follows:



Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
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SOUTH AFRICA / BERMUDA TAX INFORMATION EXCHANGE AGREEMENT

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- Articles of interest in the South Africa – Bermuda Tax Information Exchange Agreement are as follows:



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SOUTH AFRICA / BAHAMAS TAX INFORMATION EXCHANGE AGREEMENT



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- Articles of interest in the South Africa – Bahamas Tax Information Exchange Agreement are as follows:



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

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

- (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.



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