

No. 14 of 2002.

*The Antigua and Barbuda Tax
Information Exchange Act 2002.*

1 ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

16th December, 2002.

ANTIGUA AND BARBUDA

No. 14 of 2002

AN ACT to establish procedures to enable Antigua and Barbuda to comply with requests made under any tax information exchange agreements and to make provision for other matters in connection therewith.

[27th December, 2002]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Antigua and Barbuda Tax Information Exchange Act 2002. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

"Agreement" means an arrangement between Antigua and Barbuda and any other country for establishing a taxation treaty or tax information exchange agreement;

"Business" includes profession or trade;

"Commissioner" means the person appointed by the Public Service Commission as Commissioner of Inland Revenue under section 3 of the Inland Revenue Administration Act;

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"Competent Authority" means any person designated in any Agreement as a Competent Authority or the person referred to in subsection (2) to exercise the powers or perform the functions conferred upon the Competent Authority under that Agreement or this Act;

"Contracting States," mean the Government of a foreign country and the Government of Antigua and Barbuda;

"document" includes any book, paper, statement, account, writing or record and any device by means of which material is recorded or stored;

"information" means any fact or statement, in any form whatever, that may be relevant or material to tax administration and enforcement, including (but not limited to):

- (i) testimony of an individual, and
- (ii) documents, records or tangible property of a person or Contracting State;

"Person" includes an individual, partnership, corporation, trust, estate, association or other legal entity;

"Premises" includes any place whatsoever and any means of transport;

"Request" means an application made pursuant to an Agreement;

"Requesting State" and "Requested State" mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide information;

"Regulations" mean regulations made under section 13;

"the Minister" means the Minister responsible for Finance.

(2) For the purposes of this Act the Commissioner is designated to exercise the powers and perform the duties of the Competent Authority.

(3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right.

3. (1) This Act applies to the implementation in Antigua and Barbuda of any Agreement under which Antigua and Barbuda is required to provide assistance in compliance of obligations assumed by Antigua and Barbuda under any such Agreement.

**Application of
Act.**

(2) No provision of an Agreement is enforceable in Antigua and Barbuda unless such Agreement is ratified by a Resolution of the House of Representatives.

4. (1) A request must be in writing and signed by or on behalf of the Competent Authority of the requesting State or by any person designated by the Competent Authority to perform the functions of the Competent Authority under any Agreement.

**Procedure in
respect of a
request.**

(2) A request shall contain the following —

- (a) the particulars of the information sought as identified in the request;
- (b) the description of the requested information;
- (c) the particulars that the information sought is in Antigua and Barbuda and that a person specified in the request has or may have the information in his possession, custody, or control;
- (d) the identity of the taxpayer in respect of whom the information is sought;
- (e) a statement showing the relationship of the information to the identified taxpayer;
- (f) the purpose for which the information is required (For example for determining, assessing and collecting taxes or for investigation or prosecution of tax offences or offences involving the contravention of a tax administration law);
- (g) where the request is in respect of determining, assessing and collecting of tax, the law imposing the tax must be specified; where the request involves contravention of a tax administration, the law contravened or believed to have been contravened must be specified;

- (h) a statement that the information being sought is forceably relevant or material to the enforcement in the requesting State of the domestic laws in respect of determining, assessing and collecting taxes or for the prosecution of tax offences or involves the contravention of tax administration law;
- (i) that the information relates to the taxable period specified in the request and that the period in respect of which the information is sought is not barred by the applicable statute of limitation of the requesting State.

(4) Subject to subsections (1) and (2), a request shall be in such form as may, from time to time, be prescribed by regulation.

Authority to
obtain informa-
tion.

5. (1) The Commissioner may, in the execution of any request, require an officer in the employment of the Government or any local Government or other public body or statutory authority to supply such particulars as may be required for the purposes of this Act and which may be in the possession of such officer.

(2) The Commissioner may, in the execution of any request under any Agreement —

- (a) examine any books; papers, records, or other property that may be relevant or material to such request;
- (b) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such request;
- (c) compel any person having knowledge or in possession, custody or control of information which may be relevant or material to such request to appear at a stated time and place and testify and produce books, papers, records, or other tangible property;
- (d) take such testimony of any individual;
- (e) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;

permit persons designated by the Competent Authority of the requesting State, including the taxpayer identified under section 4(2)(d), counsel for the taxpayer and persons authorised to administer and enforce the domestic laws of the requesting State covered by the Agreement, to be present;

- (g) allow persons permitted to be present with an opportunity to question, directly or through the Commissioner, the person giving testimony or producing books, papers, records or other tangible property;
- (h) secure original and unedited books, papers, records and other tangible property;
- (i) secure or produce true and correct copies of original and unedited books, papers and records;
- (j) determine the authenticity of books, papers, records and other tangible property produced;
- (k) examine the person producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;
- (l) permit the Competent Authority of the requesting State to provide written questions to which the person producing books, papers, records and other tangible property is to respond regarding the item produced.

(3) Notwithstanding the provisions of any other law, the Commissioner shall obtain and provide information held by financial institutions, nominees, or persons acting in agency or fiduciary capacity (not including information that would reveal confidential **communications** between a client and an attorney, solicitor or other legal representative where the client seeks legal advice), or information respecting ownership interests in a person.

(4) The Commissioner shall provide the Competent Authority of the requesting State copies of publicly available records,

including documents or information in any form which relates to tax information covered by this Act and in the possession of a government department or agency of the Government in Antigua and Barbuda.

Cap. 212. (5) The Commissioner may provide to the Competent Authority of the requesting State copies of any records, including documents or information in any form which relates to tax information covered by the Agreement, and which are in the possession of a government department or agency in Antigua and Barbuda, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to the Commissioner under the Income Tax Act.

(6) Subject to this section, where the Commissioner receives a request that complies with the requirements of section 4, he shall provide information to the Competent Authority of the requesting State in the form and manner specified in regulations made under section 13.

**Power to require
production of
information.**

6. (1) Where the Commissioner receives a request which complies with the requirements of section 4, he shall issue a written notice to the person referred to in section 4(2)(c) directing such person to deliver to the Commissioner the requested information.

(2) The Commissioner shall send a copy of the notice referred to in subsection (1) to the person identified under section 4(2)(d).

(3) A person who is directed by a notice under subsection (1) to deliver information shall deliver it to the Commissioner in accordance with the notice if that person has the information in his possession or has custody or control of it.

(4) A notice issued under subsection (1) must —

- (a) contain the relevant details of the information sought; and
- (b) subject to subsection (5), specify the time within which the information sought is to be delivered to the Commissioner, which time shall not be more than fourteen days.

(5) The Commissioner may extend the time specified in the notice where he considers that the circumstances warrant an extension of the time.

(6) A person complies with a notice under subsection (1) if he delivers the requested information to the Commissioner in accordance with the terms of the notice.

(7) A notice given in a request to produce information under this section to a person is an absolute defense to any claim brought against that person in respect of any action taken or any omission made by him in good faith in compliance with the notice.

(8) Where the Commissioner receives information in compliance with a notice under subsection (1), he shall without delay forward the information to the Competent Authority of the requesting State.-

7. (1) The Commissioner or an officer in his department authorised by him in writing may apply to a magistrate under and in accordance with the provisions of this section for a warrant to enter upon premises for the purpose of enforcing a notice issued under section 6.

**Power to enter
premises to
obtain informa-
tion.**

(2) Any officer so authorised under subsection (1) must produce to the magistrate the written authority signed by the Commissioner.

(3) If on information given on oath by such an officer, a magistrate is satisfied that there is reasonable ground for suspecting that an offence against this Act has been, or is being, or is about to be committed on any premises endangering the delivery of information sought by the Commissioner, the Magistrate may issue a warrant, in writing, authorizing the officer to enter and search the premises, if necessary by force, at any time within 14 days commencing on the day on which the warrant is signed by the magistrate.

(4) In issuing a warrant under this section, the magistrate may impose such restrictions upon the execution of the warrant, in accordance with any law in force in Antigua and Barbuda.

(5) An officer entering premises by virtue of a warrant under this section may be accompanied by a police officer and such

other person and equipment as he considers necessary to enable him to enforce the warrant, and on leaving such premises entered by virtue of a warrant under this section, shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(6) On entering any premises by virtue of a warrant under this section, the officer may seize and remove any material or information relevant to a request under this Act whatsoever found there which he reasonably believes may contain information relevant to a request, and shall immediately deliver such material and information so seized and removed to the Commissioner.

(7) Where entry to a premises has been made by virtue of a warrant under this section and the officer making the entry has seized any material containing information under the authority of the warrant, he shall prepare an inventory of such material containing the information so removed and if so requested by a person showing himself either —

- (a) to be the occupier of the premises; or
- (b) to have had possession or custody of those things immediately before the seizure, provide that person with a copy of that inventory.

(8) Where material and information are seized under the authority of a warrant and it is shown that access to such material and information are required for the continued conduct of the business or affairs of any person, the Commissioner shall afford to that person reasonable access to the material and information solely for the purpose of continuing such business or affairs.

Provisions
supplementary to
power to produce
information and
enter premises to
obtain information.

8. (1) Where the Commissioner obtains material containing information by virtue of section 6 or 7, he shall —

- (a) unless he returns such material or information pursuant to paragraph (c), and in any event for a period of twenty days, commencing on the day on which he obtained the information, not disclose or reveal to any person the contents or import of the material or information.

- (b) after the expiry of the period twenty (20) days, if the material, in his opinion, contains information sought by a request be entitled to make copies of it and keep them for his record and make such other copies available to others in furtherance of the request;
- (c) whether or not the material contains information sought by a request, return the material as soon as practicable to the person **from** whom he obtained it;
- (d) extend the time period in the event a taxpayer or interested person has objected to the Minister providing the assistance requested or otherwise seeking judicial review of an act of the Commissioner pursuant to the provisions of section 9.

9. Any person to whom a notice has been issued in **accordance** with section 6 or any person affected by such notice may apply to a Judge in Chambers within fourteen (14) days or such longer time as the Court may determine, commencing from the date the notice is served on such person, for a review of the Commissioner's decision to issue such notice. **Judicial Review.**

10. (1) A document to be served under this Act is properly served on the person to whom it is addressed if it is served in the manner provided under subsections (2) or (3). **Service of document.**

(2) The document may be served on or delivered to the person personally or being sent by registered post in his name to his last known business or private address.

(3) References in this section to the serving of a document on a person include the giving of the document to him.

11. (1) Any person who — **Offences.**

- (a) contravenes subsection (3) of section 6;
- (b) gives false evidence or produces false books, papers, records or other tangible property pursuant to subsection (6) of section 6 commits an offence;
- (c) willfully obstructs an officer executing a warrant under section 7 or a person lawfully accompanying

him pursuant to subsection (5) of that section, commits an offence.

(2) If any person, in or in connection with delivering information pursuant to subsection (3) of section 6, willfully tampers or alters any **information** or any part of such information so that the information or any part of such information is false when received by the Commissioner commits an offence.

(3) Any person who willfully alters, destroys, damages or conceals any information requested by the Commissioner pursuant to section 6 **commits** an offence.

(4) A person who **commits** an offence under this section may be proceeded against summarily, and is liable on conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding six months or to both.

Deposition, etc.

12. (1) Where a request so stipulates, the Commissioner shall obtain the information sought by the request in the form of —

- (a) deposition of witnesses; or
- (b) original documents or copies of original documents, being depositions so made, and documents or copies so certified or authenticated.

(2) Regulations may confer such functions on such persons as may be specified in the regulations in order to give full effect to subsection (1).

Regulations.

13. (1) The Minister may make regulations for the better carrying out of the purposes and functions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may by regulation —

- (a) prescribe forms for the execution of requests made in pursuance of this Act;
- (b) prescribe anything that is required to be prescribed under this Act.

(3) Any Regulation made under this Act is subject to affirmative resolution of the **Legislature**.

No. 14 of 2002.

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Information Exchange Act 2002.*

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AND
BARBUDA

Passed the House of Representatives
this 22nd day of October, 2002.

Passed the Senate this 5th
day of November, 2002.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

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