

BELIZE:

STATUTORY INSTRUMENT

No. 43 of 2014

ORDER made by the Minister of Finance in exercise of the powers conferred upon him by section 95A of the Income and Business Tax Act, Chapter 55 of Laws of Belize, Revised Edition 2000-2003, as amended by the Income and Business Tax (Amendment) Act, 2009 (No. 6 of 2009), and all other powers thereunto him enabling.

(Gazetted 7th June, 2014.)

WHEREAS, section 95A(1) of the Income and Business Tax Act, Chapter 55 of the Laws of Belize, Revised Edition 2000-2003, as amended by the Income and Business Tax (Amendment) Act, 2009 (No. 6 of 2009) [hereinafter referred to as “**the Act**”] provides that the Minister [of Finance] may enter into Tax Information Exchange Agreements with the government of any country or territory outside Belize with a view to applying international standards on transparency and effective exchange of information relating to tax matters;

AND WHEREAS, subsection (2) of section 95A of the Act further provides that every such agreement as aforesaid shall be incorporated in an Order which shall be published in the Gazette as a statutory instrument, and upon such publication, the Order shall have the force of law in Belize notwithstanding anything in this or any other enactment, and the restrictions contained in section 4 of the Act on the disclosure of information shall not apply with respect to a request for information pursuant to such agreement;

AND WHEREAS, the Minister of Finance has entered into a Tax Information Exchange Agreement with the Government of the **Republic of South Africa**,

NOW, THEREFORE, IT IS HEREBY ordered as follows:-

Short title.

1. This Order may be cited as the

**TAX INFORMATION EXCHANGE AGREEMENT
(BELIZE/SOUTH AFRICA) ORDER, 2014.**

Interpretation.

2. In this Order, unless the context otherwise requires —

“**Agreement**” means the Agreement between the Government of Belize and the Government of the Republic of South Africa for the Exchange of Information relating to Tax Matters, signed on the 6th May, 2014, as set out in the Schedule hereto;

Schedule.

“**authorised representative**” of the Minister means the Financial Secretary;

“**competent authority**” means, in the case of Belize, the Minister of Finance or the Financial Secretary; and in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;

“**days**” means calendar days;

“**IFS Practitioner**” means any person or entity licensed by the International Financial Services Commission to carry on the business of ‘international financial services’ as that term is defined in section 2 of the International Financial Services Commission Act;

“financial institution” means a bank or financial institution as defined in the Domestic Banks and Financial Institutions Act or the International Banking Act, and includes brokerage firms and insurance companies;

No. 11 of
2012.
CAP. 267.

“Minister” means the Minister of Finance;

“reporting entity” shall have the meaning assigned to it in section 2 of the Money Laundering and Terrorism (Prevention) Act, 2008, as amended;

No. 18/2008
4/2013
7/2014

“service provider” has the meaning assigned to it in the Trust and Company Service Providers (Best Practices) Regulations;

S.I. 37/2007

“supervisory authority” shall have the meaning assigned to it in section 2 of the Money Laundering and Terrorism (Prevention) Act, 2008, as amended.

No. 18/2008
4/2013
7/2014

3. For the purpose of complying with a request for information pursuant to the Agreement, the Financial Secretary shall have power to obtain and provide all such information, including (without limitation):

Power of the
Financial
Secretary to
obtain and
provide
information.

- (a) information held by banks, other financial institutions, and any person acting in any agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts and foundations including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

**Duty to supply
information to
the Financial
Secretary.**

4. (1) Where the Financial Secretary is satisfied that a request for information from the competent authority of South Africa falls within the terms of the Agreement, he may under his hand require any bank, financial institution, reporting entity, supervisory authority, IFS Practitioner, Trust Agent, Registered Agent of International Business Companies, Foundations or International Limited Liability Companies, Service Providers, Registrar of (local) Companies, Registrar of International Business Companies, Registrars of domestic and International Trusts, Registrar of Foundations, Registrar of Limited Liability Partnerships, Registrar of International Limited Liability Companies, Supervisor of (domestic) Insurance, Supervisor of International Insurance, taxing authority, public statutory corporations, public officers, or any other person, who the Financial Secretary believes may have relevant information, to furnish such information or produce such document as may be required to comply with the request for information.

(2) Every person who is required by the Financial Secretary to provide information or produce documents pursuant to this Order shall provide the requisite information or documents as soon as possible but no later than thirty (30) days from the date of the request for information.

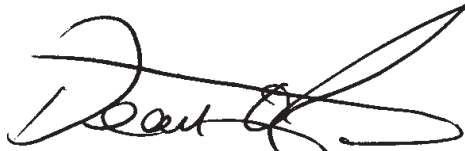
(3) Every person who refuses or fails to supply such information or documents to the Financial Secretary, or wilfully supplies false or misleading information, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and term of imprisonment.

(4) No restrictions on the disclosure of information contained in any other law shall apply to a request for information pursuant to the Agreement and no suit for breach of confidentiality or other such action shall lie against any person who discloses information, produces documents

or renders other assistance in compliance with a request for information under this Order.

5. This Order shall come into force on the 16th day of June, 2014. **Commencement.**

MADE by the Minister of Finance this 6th day of June, 2014.

A handwritten signature in black ink, appearing to read 'Dean O. Barrow', with a large, sweeping flourish extending to the right.

(DEAN O. BARROW)

Minister of Finance

SCHEDULE

[Paragraph 2]

**AGREEMENT
BETWEEN
THE GOVERNMENT OF
BELIZE
AND
THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA
FOR THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS**

PREAMBLE

WHEREAS the Government of Belize and the Government of the Republic of South Africa ("the Parties") have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

DESIRING THEREFORE the Parties in concluding the following Agreement which contains obligations on the part of the Parties only,

HAVE AGREED AS FOLLOWS:

ARTICLE 1**SCOPE OF THE AGREEMENT**

The 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 Parties concerning the taxes covered by this 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 the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2**TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Belize:
 - (i) the income tax (including surtax or surcharge);
 - (ii) the business tax;
 - (iii) the general sales tax; and
 - (b) in the case of South Africa:
 - (i) the normal tax;
 - (ii) the withholding tax on royalties;
 - (iii) the dividend tax;
 - (iv) the tax on foreign entertainers and sportspersons; and
 - (v) the value-added tax.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement:
- (a) the term "Belize" means the land and sea areas as defined in Schedule 1 to the Belize Constitution, including the territorial waters and any other area in the sea and in the air within which Belize, in accordance with international law, exercises sovereign rights or its jurisdiction;
 - (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;
 - (c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (d) the term "competent authority" means:
 - (i) in the case of Belize, the Minister of Finance or his authorised representative; and
 - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
 - (e) the term "criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
 - (f) the term "criminal tax matters" means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
 - (g) the term "information" means any fact, statement, document or record in whatever form;
 - (h) the term "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

- (i) the term "person" includes an individual, a company or any other body or group of persons;
 - (j) 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 or explicitly restricted to a limited group of investors;
 - (k) 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;
 - (l) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
 - (m) the term "public collective investment scheme" means any 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) the term "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
 - (o) the term "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
 - (p) the term "tax" means any tax covered by this Agreement.
2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged 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 it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use the information gathering measures it considers relevant 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 Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and 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)
 - (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;
 - (ii) in the case of trusts, information on settlors, trustees and beneficiaries.
5. This Agreement 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.
6. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:
 - (a) the identity of the person under examination or investigation;
 - (b) the period for which the information is requested;

- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
 - (d) the tax purpose for which the information is sought;
 - (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
 - (f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
 - (g) to the extent known, the name and address of any person believed to be in possession or able to obtain the information requested;
 - (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, 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 and that it is in conformity with this Agreement; and
 - (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.
7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 5

TAX EXAMINATIONS ABROAD

1. With reasonable notice, the requesting Party may request that the requested Party allow 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, to interview individuals and examine records with the prior written consent of the individuals or other 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 individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend 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.

ARTICLE 6

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 public policy of the requested Party.
2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. 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.
5. 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 7**CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) 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. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such 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.
4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

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 (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 9**MUTUAL AGREEMENT PROCEDURE**

1. 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.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. The Parties shall agree on other forms of dispute resolution should this become necessary.

ARTICLE 10

ENTRY INTO FORCE

This Agreement shall enter into force thirty (30) days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, 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.

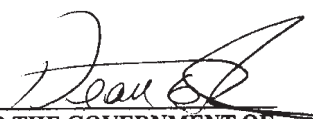
ARTICLE 11

TERMINATION

1. This Agreement shall remain in force until terminated by either Party.
2. Either 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 three (3) months' after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at BELTROPAN on 6th day of MAY
in the year 2014.


FOR THE GOVERNMENT OF
BELIZE


FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA