

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 19 of 2010

Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (French Republic) Order.

In exercise of the powers conferred by section 3 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, No. 7 of 2009, the Minister makes the following Order:

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1. Citation.

This Order may be cited as the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (French Republic) Order, 2010.

2. Interpretation.

In this Order, “Act” means the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, No. 7 of 2009.

3. Amendment of Schedule.

The Schedule to the Act is amended by

- (a) inserting the word “First” before the word “Schedule” in the Arrangement of Sections;
- (b) inserting the word “First” before the expression “Schedule to this Act” in sections 3 (1) (b), 3 (2), 3 (4) (a), 3 (6) (a) (i), 5 (2) (b) and (d), 6 (2), 7 (1), 7 (3), 8 (9) (c) and (e), 10 (2) and 15 (1) (a);
- (c) inserting the word “First” before the word “Schedule” which immediately follows section 19.

4. Addition of Second Schedule.

The Act is amended by

- (a) inserting the expression “Second Schedule” in the Arrangement of Sections immediately following the expression “First Schedule”;
- (b) adding the following Second Schedule immediately following the Rules for the Exchange of Information on Tax Matters set out in the First Schedule;

“SECOND SCHEDULE

(section 3 (6))

Scheduled Countries

1. French Republic”.

5. Addition of Third Schedule.

The Act is amended by

- (a) inserting the expression “Third Schedule” in the Arrangement of Sections immediately following the expression “Second Schedule”;
- (b) adding the following Third Schedule immediately following the Scheduled Countries set out in the Second Schedule

“THIRD SCHEDULE

(section 3 (5))

PART I

Agreement Between The Government Of The French Republic And The Government Of Saint Christopher (Saint Kitts) And Nevis For The Exchange Of Information Relating To Tax Matters

WHEREAS the Government of the French Republic and the Government of Saint Christopher (Saint Kitts) and Nevis (“the Contracting Parties”) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, therefore, the Contracting Parties have agreed to conclude the following Agreement :

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

1. The competent authorities of the Contracting Parties 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, verification and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

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

To enable the provisions of 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 held by, a resident or national or citizen of a Contracting Party. A Requested

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

ARTICLE 3 TAXES COVERED

1. The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

3. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties.

4. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4 DEFINITIONS

1. For the purposes of this Agreement, unless otherwise defined:
 - a) “France” means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
 - b) “Saint Kitts and Nevis” means the twin island Federation of Saint Kitts (Saint Christopher) and Nevis, and when used in a geographical sense means the territories of Saint Kitts and Nevis;
 - c) the term “competent authority” means:
 - i) in the case of France, the Minister of Finance, or his authorised representative;
 - ii) in the case of Saint Kitts and Nevis, the Financial Secretary or the Financial Secretary’s authorised representative;
 - d) the term “person” includes a natural person, a legal person, or any body or group of such persons;
 - e) the term “tax” means any tax to which the Agreement applies;
 - f) the term “Requesting Party” means the Party requesting information;
 - g) the term “Requested Party” means the Party requested to provide information;
 - h) the term “information gathering measures” means laws and administrative, judicial or regulatory procedures that enable a Contracting Party to obtain and provide the requested information;

- i) the term “information” means any fact, statement, document or record in any form whatever;
- j) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- k) 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 statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein 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 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 such conduct occurred in the Requested Party.

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, that Contracting 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 authorities, for the purposes of this Agreement, have 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) (i) information regarding the legal ownership and the beneficial ownership of companies, partnerships, collective investment schemes, and other persons;
- (ii) in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and
- (iii) in the case of a foundation, information on the founders, members of the foundation council and beneficiaries.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party:

- a) the identity of the person under examination or investigation;

- b) the period of time with respect to which information is requested;
 - c) the nature of the information requested and the form in which the Requesting Party wishes to receive it;
 - d) the tax purposes for which the information is sought;
 - e) grounds for believing that the information requested is present in the Requested Party or is in the possession of, or in the control of or obtainable by a person within the jurisdiction of the Requested Party;
 - f) to the extent known, the name and address of any person believed to be in possession of or in control of or able to obtain the requested information;
 - g) a statement that the request conforms with the law and administrative practices of the Requesting Party;
 - h) 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 difficulties.
6. To ensure a prompt response, the competent authority of the Requested Party shall:
- a) 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;
 - b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, it shall inform the Requesting Party, explaining the reason for its inability.

ARTICLE 6

TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. The Requested Party may, to the extent permitted under its domestic laws, 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 to interview individuals and examine records with the prior 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 allow 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 official 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 tax examination shall be made by the Requested Party conducting the examination.

ARTICLE 7
POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement or where the disclosure of the information requested would be contrary to public policy (*ordre public*).

2. The provisions of this Agreement shall not impose upon a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret (confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of seeking or providing legal advice or for the purposes of use in existing or contemplated legal proceedings) or trade process, provided that information described in Paragraph 4 of Article 5 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 the Requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the Requested Party under this Agreement.

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 8
CONFIDENTIALITY

1. All information received by the competent authority of a Contracting Party shall be kept confidential.

2. Information provided to the competent authority of the Requesting Party may be used for purposes other than the purposes stated in Article 1 with the prior express written consent of the Requested Party.

3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in this Agreement and used by such persons or authorities only for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

4. Information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 9
ADMINISTRATIVE COSTS

Ordinary costs incurred in providing assistance shall be borne by the Requested Party. The Requested Party may request from the Requesting Party the reimbursement of direct extraordinary costs incurred in providing assistance.

ARTICLE 10
IMPLEMENTING LEGISLATION

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement. This includes: availability of information, access to information, exchange of information.

ARTICLE 11
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 endeavour to resolve the matter by mutual agreement.

2. In addition to these latter agreements, the competent authorities of the Contracting Parties may mutually agree on 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 reaching an agreement under this Article.

4. The Contracting Parties may also agree in writing on other forms of dispute resolution should this become necessary.

ARTICLE 12
ENTRY INTO FORCE

This Agreement shall enter into force when each Contracting Party has notified the other of the completion of its necessary internal procedures 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 13
TERMINATION

1. Either Contracting Party may terminate this Agreement by serving a notice of termination.

2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.

3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

DONE by exchange of letters on behalf of the Government of Saint Christopher and Nevis signed by Mrs Janet Harris, Financial Secretary and dated 1st April 2010 and on behalf of the Government of the French Republic signed by Mr Eric Woerth, Mistère Du Budget and dated 22 March 2010.

Made this 22nd day of November, 2010

DENZIL L DOUGLAS
Minister responsible for Finance