

ANTIGUA AND BARBUDA



TAX INFORMATION EXCHANGE (MISCELLANEOUS AMENDMENTS) ACT, 2011

No. 19 of 2011

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**TAX INFORMATION EXCHANGE (MISCELLANEOUS AMENDMENTS) ACT, 2011**

**ARRANGEMENT**

**Sections**

1. Short title
2. Amendment of the Income Tax Act, Cap 212
3. Amendment of the Inland Revenue Administration Act, Cap. 217
4. Amendment of the International Business Corporation Act, Cap. 222
5. Amendment of the Companies Act, 1995, No. 18 of 1995
6. Amendment of the Antigua and Barbuda Tax Information Exchange Act, 2002, No. 14 of 2002
7. Amendment of the International Trust Act, 2007, No. 18 of 2007
8. Amendment of the International Foundations Act, 2007, No. 19 of 2007
9. Amendment of the International Limited Liability Company Act, 2007, No. 20 of 2007.

[L.S.]



I Assent,

**Sir. Eustace B. Francis KCN,**  
*Deputy Governor-General.*

6th January, 2012.

**ANTIGUA AND BARBUDA**

**TAX INFORMATION EXCHANGE (MISCELLANEOUS AMENDMENTS) ACT, 2011**

**No. 19 of 2011**

AN ACT to amend certain Acts of Parliament to make provisions for the maintenance and retention of records and for other matters connected therewith.

ENACTED by the Parliament of Antigua and Barbuda as follows:

**1. Short title.**

This Act may be cited as the Tax Information Exchange (Miscellaneous Amendments) Act, 2011.

**2. Amendment of the Income Tax Act, Cap 212.**

**Amendment of section 77 – Books of Accounts to be kept**

Section 77 of the Income Tax Act Cap. 212 is repealed and substituted by the following –

“(1) A person engaged in any business by way of trade or in any profession or required to make any return under this Act shall keep and maintain in Antigua and Barbuda in the

English language, books of account, sufficient to record all transactions in order to ascertain the gains and profits made or the loss incurred in respect of these transactions.

- (2) In addition to the books of account referred to in subsection (1), any source documents and underlying documentation utilized in the creation of the books of account and the underlying documentation must also be retained.
- (3) Notwithstanding the requirements of any other law, such records must be retained for a minimum period of seven (7) years from the date on which the transaction took place.
- (4) For the purposes of this section, source documents shall include but not limited to sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements, contracts and all documents which relate to any element of the transaction.
- (5) A person who fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine of ten thousand dollars or imprisonment for six months. In addition to any penalty imposed by the Court, he shall be liable to pay any tax to which he may be assessed under the provisions of this Act.”

### **3. Amendment of the Inland Revenue Administration Act, Cap. 217.**

#### **Insertion of Sections 4B and 4C**

The Inland Revenue Administration Act is amended by the insertion of the following new sections—

#### **“4B – Responsibilities of persons required to make returns**

- (1) A person required to make any return under any of the Acts included in schedule 1 to this Act or any other enactment for which the Commissioner is responsible shall keep and maintain in Antigua and Barbuda in the English language, books of account sufficient to record all transactions in order to ascertain the gains and profits made or the loss incurred in respect of these transactions.
- (2) In addition to the books of account referred to in subsection (1), any source documents and underlying documentation utilized in the creation of the books of account must also be retained.
- (3) Notwithstanding the requirements of any other enactment, the records referred to in this section must be retained for a minimum period of seven (7) years from the date on which the transaction took place.

- (4) For the purposes of this section source documents include but are not limited to sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements and all documents which relate to any element of the transaction.

#### 4C – Offence and Punishment

4C (1) A person, who fails to comply with the provisions of section 4B is guilty of an offence against this Act, and is liable on conviction to a fine of ten thousand dollars or to imprisonment for six months.

- (2) In addition to any penalty imposed, he shall be liable to pay any tax to which he may be assessed under the provisions of this Act.

### **4. Amendment of the International Business Corporation Act, Cap. 222**

#### **Amendment of Division G – Special Taxation Provisions.**

Division G of the International Business Corporation Act, Cap. 222 is amended by the insertion of the following new section.

“281 (A) – Compliance with the requirement of treaty obligation.

(1) Notwithstanding the provisions of section 244 and section 254 in this Division, a disclosure of information of an exempt corporation shall be made to the Competent Authority –

- (a) upon a written request signed by or on behalf of the Competent Authority of the requesting jurisdiction or by a person designated by the Competent Authority to perform the functions of the Competent Authority of a requesting jurisdiction;
- (b) in the form and manner specified under the Antigua and Barbuda Tax Information Exchange Act.

to enable him to comply with valid treaty or convention obligation in force between Antigua and Barbuda and any other jurisdiction pertaining to exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters.

### **5. Amendment of the Companies Act, 1995, No. 18 of 1995**

#### **Insertion of Sections 154 and 356**

The Companies Act is amended as follows —

(a) by inserting after section 154 the following –

“154(A) (1) A company shall retain all accounting records to include underlying documentation that:

- (i) correctly explain all transactions;
- (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and
- (iii) allow financial statements to be prepared.

(2) The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases and other transactions; and
- (iii) the assets and liabilities of the entity.

(3) A company shall retain all accounting records referred to in section 154(A) (2) for a minimum period of six years from the date of winding up to enable compliance with this Act, the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

(b) by inserting after section 356 the following —

“356A (1) An external company shall retain all accounting records to include underlying documentation which includes, the documents that:

- (i) correctly explain all transactions;
- (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and
- (iii) allow financial statements to be prepared.

(2) The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:—

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases and other transactions; and
- (iii) the assets and liabilities of the entity.

(3) An external company shall retain all accounting records referred to in section 356(A)(2) for a minimum period of six years from the date of winding up to enable compliance with this Act, the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

## **6. Amendment of the Antigua and Barbuda Tax Information Exchange Act, 2002**

### **Amendment of section 4 – Procedure in respect of a request**

Section 4 of the Antigua and Barbuda Tax Information Exchange Act is amended by the repeal of paragraph (c) of subsection (2) and the substitution of the following –

“(c) the particulars that the information requested is under the possession, custody or control of a person within Antigua and Barbuda”

### **Amendment of section 6 – Power to require production of information**

Section 6 of the principal Act is amended by the repeal of subsection (2) and the substitution of the following –

“(2) The Commissioner may send a copy of the notice referred to in subsection (1) to the person identified under section 4(2) (d), unless in the opinion of the Commissioner, the service of such a notice may lead to the obstruction of any investigation for which the information is requested or unduly delay the effective exchange of the information”.

## **7. Amendment of the International Trust Act, 2007, No. 18 of 2007**

### **Amendment of Section 42 – Accounting Information and Underlying Documentation**

(1) The International Trust Act is amended in section 42 by inserting after subsection (5), the following subsections –

“(6) A trustee shall retain all accounting records and underlying documentation, that –

- (i) correctly explain all transactions,



- (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time and
- (iii) allow financial statements to be prepared.

(7) The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases and other transactions; and
- (iii) the assets and liabilities of the entity.

“(8) A trustee shall retain all accounting records referred to in section 42(6), and underlining documentation for a minimum period of six years from the date of termination to enable compliance with this Act, the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

#### **Amendment of section 88 – Permissible disclosure of confidential information**

Section 88, paragraphs (b) and (c) of the International Trust Act are repealed and substituted by the following paragraphs –

- “(b) upon the written request of an authorised officer of the Government of Antigua and Barbuda, or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a criminal offence if—
  - (i) the request for the information or legal assistance identifies the investigation, prosecution or offence, as well as the person or entity charged or
  - (ii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda; or
  - (iii) the Court has determined that the confidential information is required to prove the offence.”
- “(c) upon the written request of an authorised officer of the Government of Antigua and Barbuda, or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction

pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if the request complies with the Antigua and Barbuda Tax Information Exchange Act.”

## **8. Amendment of the International Foundations Act, 2007, No. 19 of 2007**

### **Amendment of Section 46 – Accounting Information and Underlying Documentation**

Section 46 of the International Foundation Act, 2007, No. 19 of 2007 is amended by inserting after subsection (5), the following subsections –

“(6) A foundation council shall retain all accounting records and underlying documentation that –

- (i) correctly explain all transactions;
- (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and
- (iii) allow financial statements to be prepared.

(7) The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases and other transactions; and
- (iii) the assets and liabilities of the entity.

“(8) A foundation council shall retain all accounting records referred to in section 42(6), and underlying documentation for a minimum period of six years from the date of dissolution to enable compliance with this Act, the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

### **Amendment of section 88 – Permissible disclosure of confidential information**

Section 88 is amended by the repeal of paragraphs (b) and (c) and the substitution of the following paragraphs.

- “(b) upon the written request of an authorised officer of the Government of Antigua and Barbuda, or the Commissioner of Inland Revenue, or pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a criminal offence if—
- (i) the request for the information or legal assistance identifies the investigation, prosecution or offence, as well as the person or entity charged or
  - (ii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda; or
  - (iii) the Court has determined that the confidential information is required to prove the offence.”
- (c) upon the written request of an authorised officer of the Government of Antigua and Barbuda or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if —
- (i) the request is in accordance with the Antigua and Barbuda Tax Information Exchange Act, 2002 No. 14 of 2001; and
  - (ii) the request for information or legal assistance identifies the offence as well as the person or entity charged with or under investigation for the offence.

## **9. Amendment of the International Limited Liability Company Act, 2007**

### **Insertion of Section 55A – Maintenance of Accounting Information and Underlying Documentation**

The International Limited Liability Company Act, 2007, No. 20 of 2007 is amended by the insertion after section 55 of the following new section.

#### **“55A. Maintenance of Records of Accounts and Underlying Documentation**

(1) A manager of a limited liability company shall keep accounts and inventory of the assets, income and liabilities of the company.

(2) A manager shall render accounts annually to the members in accordance with international financial reporting and auditing standards, audited by an independent auditor.

(3) On request of a member, the Court or the Commission, the manager shall provide an accounting as to the assets, income and liabilities of the limited liability company.

(4) If the request is made pursuant to compliance with valid treaty or convention obligation in force between Antigua and Barbuda and any other jurisdiction pertaining to exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters by a member, the Court or the Commission, the manager shall provide an accounting as to the limited liability company property as a whole.

(5) If the request is made by a member, the manager shall provide an accounting only to the extent of the member's capital contribution.

(6) One or more managers, who are vested with the management of the international limited liability company, shall retain all accounting records and underlying documentation, that –

- (i) correctly explain all transactions;
- (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and
- (iii) allow financial statements to be prepared.

(7) The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- (ii) all sales and purchases and other transactions; and
- (iii) the assets and liabilities of the entity.

“(8) A limited liability company shall retain all accounting records referred to in section 55A(1) and (6) for a minimum period of six years from the date of dissolution to enable compliance with the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

#### **Amendment of section 92 – Permissible disclosure of Confidential information**

Section 92 subsections (1)(b) and (c) of the International Limited Liability Companies Act, 2007, No. 20 of 2007 are amended by the repeal of paragraphs (b) and (c) and the substitution of the following new paragraphs.

- “(b) upon the written request of an authorised officer of the Government of Antigua and Barbuda or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a criminal offence if —
- (i) the request for the information or legal assistance identifies the investigation, prosecution or offence, as well as the person or entity charged;
  - (ii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda; or
  - (iii) the Court has determined that the confidential information is required to prove the offence.
- (c) upon the written request of an authorised officer of the Government of Antigua and Barbuda or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if the request complies with the Antigua and Barbuda Tax Information Exchange Act, 2002 No. 14 of 2002.”

Passed by the House of Representatives on  
the 16th day of December, 2011.

Passed by the Senate on the 21st day  
of December, 2011.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**Romana Small,**  
*Clerk to the House of Representatives.*

**Romana Small,**  
*Clerk to the Senate.*